U. S. Supreme Court

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TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 75

UNITED STATES OF AMERICA, PETITIONER,

vs.

SCHNEER'S ATLANTA, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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1 In the United States District Court for the Northern District of Georgia, Atlanta Division

Civil Action No. ~~4250~~ 4520

UNITED STATES OF AMERICA, PLAINTIFF

vs.

SCHNEER'S ATLANTA, INC., DEFENDANT

COMPLAINT—Filed February 19, 1953

The United States of America brings this suit against defendant named above and alleges:

I

This is a civil action brought to enjoin violations by defendant of a price stabilization regulation issued pursuant to the Defense Production Act of 1950, as amended (Public Law 69, 82d Congress, 64 Stat. 798; Public Law 96, 82d Congress); to recover damages for violations of said regulation; and to obtain such other, further and different relief as may be just and equitable. Jurisdiction of the suit is vested in this Court by Section 706 (b) of the Defense Production Act of 1950, as amended, and also by Section 1345, Title 28, United States Code.

II

Defendant is a corporation organized under the laws of the State of Georgia, and is engaged within the territorial limits of the jurisdiction of this Court in the retail business, selling watches, watch bands, and watch chains. For said purpose the defendant maintains a retail store at 48 Whitehall Street, S. W., Atlanta, Fulton County, Georgia, in charge of Harry K. Stern, President and General Manager and at which the violations complained of herein occurred.

2

III

On February 26, 1951 the Director of Price Stabilization, pursuant to said Defense Production Act of 1950, Executive Order 10161 (15 F. R. 6105), and Economic Stabilization Agency General Order No. 2 (16 F. R. 738), issued Ceiling Price Regulation 7, and on February 26, 1951 issued Supplemental Regulation 1 to Ceiling Price Regulation 7, (16 F. R. 189). The said Ceiling Price Regulation 7 and Supplemental Regulation 1 to Ceiling Price Regulation 7, are hereinafter referred to, with all pertinent prior and subsequent amendments, as "the Regulation". The Regulation, which became effective February 27, 1951, has been and still is in full force and effect, and fixes ceiling prices for retailers of a wide range of commodities.

IV

Between February 27, 1951, and the present, defendant has sold and delivered jewelry items, including watches, watch bands and chains, at retail, maximum prices for which were established and are established by the Regulation.

V

a. Section 11 of the Regulation required defendant, as other sellers subject to the Regulation, to prepare and file with the Office of Price Stabilization a pricing chart as defined in the Regulations.

b. Section 51 of the Regulation required tagging each article with the ceiling price, or marking the shelf, bin, or rack, or other holder with the ceiling price, and the posting of a sign within the establishment to "the effect that the prices of merchandise of this store are no higher than the OPS ceiling price of the article."

c. Section 55(a) of the Regulation prohibited the selling or delivering of any article at a price higher than the ceiling price permitted by the Regulation.

VI

Section 409(a) of the Defense Production Act of 1950, *supra*, provides as follows:

> "Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of section 405 of this title, he may make application to any district court of the United States or any United States court of any Territory or other place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond."

VII

a. Since February 27, 1951, and continuing to the present defendant has sold and delivered, and intends to continue selling and delivering watches, watch bands and watch chains at prices in excess of the applicable prices under the Regulation.

b. Since February 27, 1951 defendant has sold watches, watch bands and watch chains in violation of Section 51, by failing to properly mark or tag articles covered by this Regulation with the ceiling price, and by failing to post the required sign in his place of business.

VIII

Section 409(c) of the Defense Production Act of 1950, *supra*, provides in pertinent part as follows:

> "If any person selling any material or services violates a regulation or order prescribing a ceiling or ceilings, the person who buys such material or service for use or consumption other than in the course of trade or

business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In any action under this subsection, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whatever of the following sums is greater: (1) such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50 as the court in its discretion may determine: *Provided*, however, that such amount shall be the amount of the overcharge or overcharges if the defendant proves that the violation of the regulation or order in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the word "overcharge" shall mean the amount by which the consideration exceeds the applicable ceiling. If any person selling any material or service violates a regulation or order prescribing a ceiling or ceilings and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the President may institute such action on behalf of the United States within such one year period, or compromise with the seller the liability which might be assessed against the seller in such an action."

IX

a. During the month of March, 1952, the defendant sold and delivered some seventeen watches of which the plaintiff has specific knowledge at prices in excess of the ceiling prices established under applicable portions of the Regulation, such sales resulting in overcharges aggregating $328.94. These transactions are identified and described in detail in Schedule A attached hereto and made a part hereof. Schedule A sets forth for each such transaction

the date, name of purchaser, account number, commodity involved, stock number, cost in code, cost in dollars and cents, sales price, the list ceiling price, the tax, the total ceiling price and overcharge.

b. Since February 27, 1951, and continuing to the present the defendant has sold and delivered other items of jewelry including watches, watch bands and chains at prices
6 in excess of applicable maximum prices.

c. Plaintiff is presently unable to allege the total dollar amount by which the prices charged and received by defendant since February 27, 1951 exceeded the applicable maximum prices but can, and will, offer proof of such amount at the trial of this cause.

d. All of the transactions complained of herein occurred within one year of the filing of the complaint in this cause.

e. All of the transactions complained of herein either were in the course of the purchaser's trade or business, or, were other than in the course of the purchaser's trade or business and thirty days have transpired since the occurrence of the violation without any suit for damages having been filed by the purchaser.

f. None of the transactions complained of herein arose because defendant acted upon and in accordance with the written advice and instructions of the President of the United States or any official or employee authorized to act for him.

g. None of the transactions complained of herein arose out of the sale of any material or service, to any agency of the Government, pursuant to the lowest bid made in response to an invitation for competitive bids.

7 X

The United States of America brings this action in its sovereign capacity to accomplish the purposes of the Defense Production Act of 1950, *supra,* by enforcing necessary price controls designed to protect the national economy against future loss of needed purchasing power and to prevent a future collapse of values. Unless defendant and all persons in active concert or participation with defendant

are enjoined from further selling and delivering commodities at prices in excess of applicable ceilings established by the Regulation, the United States of America, plaintiff herein, will suffer immediate and irreparable injury for which it has no adequate remedy at law.

WHEREFORE, Plaintiff, the United States of America prays:

1. That this Court enter its order enjoining defendant, defendant's officers, agents, servants, employees, and all other persons in active concert or participation with defendant, and each of them, from (a) directly or indirectly selling or delivering any commodities or services at prices in excess of the applicable maximum prices under the Regulation as heretofore or hereafter amended, or under any price stabilization regulation hereafter issued which establishes maximum prices for any of such commodities
8-12 or services, and (b) from offering, soliciting, or agreeing to do any of the foregoing.

2. That this Court, pending the final determination of this cause, issue a preliminary injunction restraining and enjoining defendant, defendant's officers, agents, servants, employees, and all other persons in active concert or participation with defendant, and each of them, in the manner and form aforesaid.

3. That plaintiff be given judgment against the defendant in a sum equal to three times the amount of the prices charged and received from the jewelry items, including watches, watch bands and chains exceeded the applicable maximum prices therefor, within one year from the date of the filing hereof, together with reasonable attorney's fees and costs.

4. That this Court grant such other, further, and different relief as may be just and equitable.

(S.) J. ELLIS MUNDY,
United States Attorney.
(S.) ELMO HOLT,
Special Assistant,
United States Attorney.

Order to Show Cause, Summons, and Marshal's return omitted.

Filed Feb. 19, 1953.

EXHIBIT "A" (omitted in printing)

13 In United States District Court

ANSWER—Filed March 16, 1953

Comes now the defendant and files this its Answer to the above complaint subject to its motions heretofore filed and alleges:

1. In answer to paragraph I, defendant says that the items for which overcharges are claimed to have been made by the defendant have been decontrolled by the Office of Price Stabilization and are no longer subject to price controls, and therefore plaintiff is not entitled to an injunction and to the relief. Defendant admits the jurisdiction of the Court.

2. Defendant admits the allegations of paragraph II.

3. Defendant admits the allegations of paragraph III with the exception of the last sentence contained therein. The statements contained in the last sentence of said paragraph are denied.

4. Defendant admits the allegations of paragraph IV.

5. Defendant admits the allegations of subsections a and b of paragraph V. Answering sub-section c, the defendant alleges that Section 55(a) issued illegally by the Office of Price Stabilization and is contrary to the intent of the Act and contrary to Title 50 U.S.C.A. App. 2102 (g) and (k), as hereinafter more fully set out.

14 6. Defendant admits the allegations of paragraph VI.

7. Defendant denies the allegations of paragraph VII, a and b.

8. Defendant admits the allegations of paragraph VIII.

9. In answer to paragraph IX a, defendant states that in the normal course of its business it sold watches but that

the names of the customers and all other statements contained in Exhibit A referred to and made a part of said paragraph were prepared by a representative of the Office of Price Stabilization, and defendant can neither admit nor deny that said Exhibit A is correct, and it has no knowledge how the plaintiff arrived at the chart price or the overcharges. Defendant denies that the prices charged were in excess of ceiling prices established or in violation of existing price regulations or laws. Defendant denies that the cost prices set forth in Exhibit A are correct for the reasons hereinafter more fully set out.

10. Defendant denies the allegations of paragraph IX b.

11. Defendant states that it is not required to answer the allegation contained in Paragraph IX c.

12. Defendant can neither admit nor deny the allegations of paragraph IX d, but requests strict proof thereof.

13. For want of sufficient information, defendant can neither admit nor deny the allegations of paragraph IX e.

14. Answering paragraph IX f, defendant states that it is not guilty of any of the violations charged, but that it acted in accordance with the Defense Production Act, 50 U.S.C.A. Section 2102, etc., and as amended.

15. Defendant admits the allegations of paragraph IX g.

16. In answer to paragraph X, defendant states that the items, the subject matter of the within complaint, have been decontrolled by action of the Administrator of the Price Stabilization Act, and that the complainant is not entitled to the injunction sought.

17. Further answering said complaint, and by way of further defense, defendant alleges:

(a) That Schneer's Atlanta, Inc. was organized as a corporation by the Superior Court of Fulton County, Georgia, on July 7, 1944, and has been engaged as a corporation in the retail jewelry business continuously in the City of Atlanta, Fulton County, Georgia since said date.

(b) That the corporate stock of said corporation was owned by others than the present stockholder prior to March 23, 1951.

16 (c) That in March, 1951, negotiations took place for the purchase of the entire capital stock of said corporation to its present stockholder, and that the consideration paid for said capital stock was partially based upon the cost of the inventory as appearing on the records of said corporation and on hand and in said premises of the defendant on or about March 23, 1951.

(d) That the holders and owners of the capital stock of the defendant corporation prior to March 23, 1951, were also the holders and owners of capital stock of other corporations engaged in the retail jewelry business in various and sundry towns in the United States, and that the said stockholders also owned and controlled a corporation under the name and style of Franklin Corp. with offices in the City of New York, State of New York, which corporation acted as the buying agent for the various retail jewelry stores owned and controlled by said stockholders, and that such facts existed during the period from May 4, 1950 to June 24, 1950, and up to the date of the sale of said corporate stock on March 23, 1951.

(e) That the said Franklin Corp. purchased watches from various and sundry manufacturers or importers and had affixed to said watches the name 'Franklin' as a trade name and resold said watches to its various stores under said trade name and at prices higher than the Franklin

17 Corp. had paid to its sources of supply; that it also sold to said stores other items of jewelry and nationally advertised watches under the names of the manufacturers thereof, and defendant alleges, upon information and belief, at prices higher than it had paid for said items to the manufacturers thereof. The defendant has no knowledge of the percentage or amount of the profit or margins over cost the said Franklin Corp. charged to its various stores, including this defendant, but it alleges upon information and belief that a part of said margin over cost charged reflected the expense to the Franklin Corp. of locating, buying and selecting merchandise, cost of maintaining an office and warehouse, telephone, stationery, etc., and all other items of expense of operating a buying office,

plus a profit to said corporation. All of said buying expenses would otherwise have been the expense of said individual stores, including this defendant.

(f) That during the period from May 24, 1950 to March 23, 1951, the defendant had on hand a very large stock of said Franklin watches, but a large quantity thereof was unacceptable to the purchaser of said corporate stock and which the purchaser rejected as a part of the inventory of the defendant corporation, and shortly after March 23, 1951, returned said unacceptable inventory to the Franklin Corp.

(g) That the previous stockholders for some time prior to the consummation of the sale of said stock con-
18 templated the sale thereof and allowed the inventory to decrease from its normal amount in anticipation of said sale.

(h) The defendant replaced over a period of time subsequent to May 1, 1951, the said inventory rejected with a large quantity of Franklin watches in order to bring the same up to the normal and customary inventory. Said replacement of Franklin watches, however, were not purchased from the Franklin Corp. but from the manufacturer or importers of said watches.

(i) That as a result of the acts of the previous officers of said corporation and the rejection of said inventory on March 23, 1951, the defendant had on hand at the time it filed its price chart with the Office of Price Stabilization on or about May 1, 1951, an abnormally and unusually small quantity of Franklin watches and was without the usual and customary price ranges of watches having different costs.

(j) After March 23, 1951, the defendant replaced said depleted inventory with new inventory and with watches in the price ranges usually and customarily carried by the defendant prior to the depletion of said stock, and during the period from May 24, 1950, to June 24, 1950, as were customarily and regularly carried theretofore by the defendant.

(k) The defendant filed with the Office of Price Stabilization a chart of the depleted watch inventory on hand and

on the date required under the Regulation as of
19 May 1, 1951, and attached to said chart a notation that it is unable to determine the actual cost of said watches, this notation having been made for the reason that the defendant did not know the actual cost of said watches to the defendant or to said Franklin Corp.

(1) That it had been the practice of the defendant to add to the cost of nondescript or not nationally advertised watches a larger percentage mark-up than is added to nationally advertised items, and that in pricing the newly purchased inventory the defendant used the same business practices, cost prices, the same customary percentage margin over cost, and methods, as it had used prior to May 1, 1951, and during the period from May 24, 1950 to June 24, 1950 and thereafter, which cost practices are authorized under Title 50, App., paragraph 2102 (g) and (k) as amended, as follows:

> "(g) The powers granted in this title (sections 2101-2110 of this Appendix) shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, except where such action is affirmatively found by the President to be necessary to prevent circumvention or evasion of any regulation, order, or requirement under this title (said sections).
>
> "(k) No rule, regulation, order, or amendment thereto shall be issued or remain in effect under this title (sections 2102-2112 of this Appendix), which shall deny sellers of materials at retail or wholesale their customary percentage margins over costs of the materials or their customary charges during the period May 24, 1950, to June 24, 1950, or on such other nearest representative date determined under section 402 (c) (subsection (c) of this section), as shown by their records during such period, except as to any one
> 20 specific item of a line of material sold by such sellers which is in short supply as evidenced by specific government action to encourage production

of the item in question; Provided, however, That if the antitrust laws of any State have been construed to prohibit adherence by sellers of materials at wholesale or retail to uniform suggested retail resale prices, the President shall issue regulations giving full consideration to the customary percentage margins of such sellers during the period hereinbefore set forth. No such exception shall reduce such customary margins of sellers at retail or wholesale beyond the amount found by the President, in writing, to be generally equitable and proportionate in relation to the general reductions in the customary margins of all other classes of persons concerned in the production and distribution of the excepted item of material.

"Prior to making any finding that a specific item of material shall be so excepted, or as to the amount of the reductions in customary margins to be imposed upon retail and wholesale sellers of such item, the President shall consult with representatives of the affected retail and wholesale sellers concerning the basis for and the amount of the exception which is proposed with respect to any such item.

"For the purposes of this section a person is a 'seller of a material at retail or wholesale' to the extent that such person purchases and resells an item of material without substantially altering its form; or to the extent that such persons sell to ultimate consumers except (1) to government and institutional consumers and (2) consumers who purchase for consumption in the course of trade or business."

18. Defendant further shows that from and after March 23, 1951, it had no independent buying office, that it bought all of its merchandise direct from the manufacturer or jobber of the various items; that all of the buying expenses formerly paid for by the Franklin Corp. were, from and after March 23, 1951, paid by this defendant which increased its cost of doing business. That under Section 2101 (k) above quoted, it had the right to maintain its same percentage markup over cost, which cost

it is entitled to increase to the extent of its increased cost of doing business; that the plaintiff has not given credit to the defendant in arriving at the proper retail price which the defendant was entitled to charge. Defendant alleges upon information and belief that it earned a profit from the operation of its business prior to March 23, 1951, but that since the acquisition of the stock by its present stockholder the defendant lost from the operation of its business during the period from June 30, 1951 to June 30, 1952, the sum of $3,490.31, and alleges upon information and belief that further sums were lost from June 30, 1952 to the date of the filing of the within suit; that the said loss was largely due to the increased cost of operating its business and to its increased buying costs.

19. Defendant further alleges that it offered to the Office of Price Stabilization in Atlanta, Georgia, to amend its price chart by adding thereto the items customarily and regularly carried in the inventory of the defendant during the period from May 24, 1950 to March 23, 1951, and that it had been informed by the officials of said Office of Price Stabilization that such amendment was not permissible.

WHEREFORE, defendant having fully answered, prays that the prayers of the plaintiff be denied and that de-
22 fendant have judgment in its favor.

(S.) J. KURT HOLLAND,
(S.) JACK H. ZINKOW,
Attorneys for Defendant.

J. Kurt Holland and
Jack H. Zinkow
Attorneys at Law
1116 First National Bank Bldg.

Duly sworn to by Harry K. Stern jurat omitted in printing.

• • • • •

23 IN UNITED STATES DISTRICT COURT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed February 25, 1954

Comes now the defendant, Schneer's Atlanta, Inc., and pursuant to Rule 56, FRCP, 28 U.S.C.A., moves the Court as follows:

1. To enter summary judgment for the defendant upon the ground and for the reason that there is no genuine issue as to any material fact and defendant is entitled to judgment as a matter of law.

2. This motion is based upon the complaint, defendant's answer, and the affidavit of Harry K. Stern, President of defendant corporation, filed with this motion.

HAAS, HOLLAND & BLACKSHEAR
By (S.) M. H. BLACKSHEAR, JR.,
Attorneys for Defendant.

Certificate of service omitted.
Filed February 25, 1954.

24 IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HARRY STERN IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed February 25, 1954

STATE OF GEORGIA,
Fulton County.

In person appeared before the undersigned authority HARRY STERN who on oath deposes and says:

1

He is President of Schneer's Atlanta, Inc., (hereafter referred to as "Schneer's") and has served continuously as such since March 28, 1951.

2

All of the capital stock of Schneer's was, prior to March 23, 1951, owned by Franklin Corp., which has offices in

New York City, and which then owned all the capital stock of a number of other similar retail jewelry stores which were operated in the same manner as Schneer's.

3

During the period May 24, 1950 to June 24, 1950, the base period established in the Defense Production Act of 1950, and thereafter until March 23, 1951, Franklin Corporation served as a purchasing agent for its subsidiary retail corporations, including Schneer's, and it was its practice to purchase goods, including watches, which it resold to its subsidiary retailers at prices which included a markup over Franklin Corporation's costs designed to cover the buying and handling expense of Franklin Corporation.

4

All invoices and other cost records of the Franklin Corporation were maintained in its offices in New York City, are not now and have not been available to the management of Schneer's since March 23, 1951, and the exact amount of costs to Franklin Corporation are not known to this deponent, although deponent is informed and believes that these costs to Franklin Corporation are not known to this deponent, although deponent is informed and believes that these costs to Franklin Corporation probably fix ceiling prices for Schneer's under Sec. 55(e) of Ceiling Price Regulation 7.

5

On March 23, 1951, deponent and his associates acquired by purchase from Franklin Corporation all of the capital stock of Schneer's.

6

At the time of the transfer of ownership and the ensuing change of management and operating personnel, the present officers and employees of Schneer's had no information as to the costs of items in stock except the cost marked on the item which represented not the true cost to Franklin Cor-

poration but its cost plus its expenses of buying as described.

7

Prior to the purchase of March 23, 1951, aforesaid, and in anticipation of this purchase the stock of mer-
26 chandise was purposely allowed to fall below normal and at the time of purhase a considerable amount of merchandise was rejected and returned to Franklin Corporation so that for several months after March 23, 1951, the stock of Schneer's was broken and much below normal.

8

The purchase price paid for the capital stock was based upon the value of the inventory at the time of the sale.

9

After the purchase of stock on March 23, 1951, the Office of Price Stabilization by Amendment No. 2 to C.P.R. 7 (16 F. R. 3006) which became effective on April 10, 1951, retail sales of all watches were made subject to the ceiling prices established by that regulation and these ceiling prices were fixed by reference to the costs and selling prices of each individual merchant for the goods he had on hand for sale on March 31, 1951, when Schneer's stock was broken and depleted.

10

No exercise of reasonable care or business judgment by Schneer's could have prevented the establishment of inequitable and unfair ceiling prices for its watches because the base pricing date was selected retroactively.

11

Schneer's undertook to file a base date pricing
27 chart—notwithstanding the fact that it did not know the cost of its watches to Franklin Corporation, and, therefore, it used in preparing its base date pricing chart the best information available to it, to wit: the cost prices marked in code on the individual items of stock which

included Franklin Corporation's cost plus a sum representing the cost or value of its services as buying agent.

12

This inaccurate statement of cost becomes highly significant because after March 23, 1951, Schneer's purchased its watches directly from the suppliers from whom Franklin Corporation previously bought and at the same prices paid by Franklin. A reduction of a few cents in cost price could, under the peculiar circumstances hereafter stated, result in the establishment of a ceiling price under CFR 7 on the same item many dollars lower than the price at which Schneer's sold that item during the base period May 24-June 24, 1950, and thereafter until April 10, 1951.

13

The base date pricing chart so fixed by Schneer's was accompanied by a written explanation of this inaccurate listing of cost.

14

Since May 24, 1950, Schneer's has handled two classes of watches and has consistently followed for that entire period different pricing and mark-up policies.

28

15

One class of watches consists of nationally advertised watches such as Gruen, Benrus, Bulova, Hamilton and Longines. Since the manufacturers of such watches spend a great deal of money on magazine, newspaper, radio and television advertising, all of which may be characterized as selling costs, the retailer's costs on such watches are higher than they would be otherwise and are easier for the retailer to sell. The retailer's costs on such nationally advertised watches, therefore, includes a substantial part of their selling costs.

16

In addition, such watches have retail prices preticketed and the manufacturers insist that these suggested resale

prices be strictly maintained under applicable fair trade and other laws.

17

At all times material since May 24, 1950, Schneer's has followed the business policy and practice of selling jewelry and watches on liberal, long term, installment credit and added no additional amount to its cash price for or by way of interest, carrying charge or other charge for such credit.

18

This liberal credit policy applied to nationally advertised watches, and the prices at which it sold them on long term installment credit were the same prices charged for cash sales of the same watches by it and by other retail jewelers who offered no installment credit.

19

It is good business policy for Schneer's to handle these nationally advertised watches even though the losses and expense incident to their sale on long term installment credit reduces the profit on such sales below that realized by retailers of watches who sell only for cash or short-term credit because only by offering their customers an opportunity to select from a large and varied stock of watches may Schneer's attract customers in adequate number to operate effectively.

20

The other class of watches which Schneer's sold continuously from May 24, 1950 to the present time are watches which are not nationally advertised and which for that reason are priced lower to it and on which Schneer's sales costs are higher, because it must provide all advertising necessary to create a demand for them. For convenience this class of watches will be referred to herein as "nondescript" watches.

At all times material to this action and to this motion a substantial portion of Schneer's sales of watches consisted of sales of nondescript watches which were manufactured

21

by the Winton Watch Company and sold to Schneer's
30 and others under the brand name "Franklin".

22

During the period from May 24, 1950 to June 24, 1950 and for the entire period material to this action since the latter date, it was the business practice of Schneer's to charge for Franklin watches a different and higher mark-up or profit margin than that charged for nationally advertised watches.

23

Under normal conditions of inventory approximately one-third of watches in Schneer's stock are Franklin watches, and under such conditions approximately one-third of the different cost prices on watches represent cost prices on Franklin watches.

24

Solely because of the unusual and abnormal conditions which accompanied the sale of the capital stock of Schneer's on March 23, 1951, on the pricing base date, March 31, 1951, Schneer's had in its watch inventory "in its store, unpacked and available for sale on that date" only 13 different Franklin watches out of a total of 165 different watches.

25

From May 24, 1950 to June 24, 1950, and thereafter until March 31, 1951, it was the practice of Schneer's and other credit jewelers whose business was comparable to that of Schneer's to charge a higher mark-up over cost for
31 nondescript watches, including Franklin watches, then they charged on advertised watches. It was not their practice to apply a uniform flat percentage mark-up on either advertised or nondescript watches. On some watch items the price and profit was lower so that the item would serve as a price leader, on other items price and profit was lower to make a particular watch competitive.

26

In practically every case of either nondescript or advertised watches the mark-up was so adjusted as to result in a selling price which, including Federal Excise Tax, would be either even dollars, or in quarters of a dollar or in the less expensive item, in five cents less than the even dollar. For example, some of its typical selling prices, including Federal Excise Tax, are and were $22.95, $24.95, $29.75, $29.95, $33.75, $37.75, $42.50, $45.00, $49.75, $50.00, $59.50, $65.00.

27

Retail price tags were invariably placed in each watch box on both advertised and nondescript watches during the period May 24-June 24, 1950, before price controls became effective; after price controls became effective until CPR 7 became applicable to watches on April 10, 1951; and during the period March 1, 1952 through February 28, 1953, which is the period covered by this action.

28

32 Deponent includes herewith a list of the data shown on the list date pricing chart for Franklin watches on hand and offered for sale by Schneer's on March 31, 1951, showing as to each the net cost, the offering price, the percentage of mark-up, the total net cost for all Franklin watches so listed, the total offering price and the average percentage mark-up on Franklin watches as follows:

Net Cost (per unit) Terms	Offering Price (per unit)	Percentage Mark-up on Cost
8.77	22.95	161.7
9.27	24.95	169.1
10.25	29.95	192.2
10.73	29.75	177.3
10.73	33.75	205.0
12.69	37.75	197.5
14.65	42.50	190.1
16.41	49.75	203.2
16.91	59.50	251.9
17.59	59.50	238.3
18.57	59.50	220.4
21.06	65.00	208.6
25.96	65.00	150.4
193.59	579.85	199.5

29

The list date pricing chart in addition to the Franklin watches described in paragraph 28 hereof listed 152 other watches having a total net cost of $3,981.58 and a total offering price of $8,462.08, making the average mark-up on these advertised watches 112.5 per cent.

30

After March 31st, Schneer's did not increase its
33 prices or in any way change its pricing practices on either nondescript or advertised watches, but continued to sell them in the manner described and at prices calculated to yield the same profit margins as realized on and before March 31, 1951, and from May 24, 1950 to March 31, 1951.

31

Government's Exhibit "A" attached to the complaint discloses that the Government in this action insists upon fixing ceiling prices for Schneer's on Franklin watches with reference to the prices charged on advertised watches on the base day. A comparison of Exhibit "A" with the list date pricing chart shows for example that the first of the overcharge items listed on the Government Exhibit "A" to its complaint cost $20.45. The list date pricing chart listed no watch having this precise cost so the calculated ceiling price as shown on Exhibit "A" was calculated by interpolating the average mark-up on a Bulova watch having a cost of $19.55 and a Benrus watch having a cost price of $20.53.

The second overcharge item had a cost of $25.95. The list date pricing chart listed no watch having this precise cost and the Government computed the ceiling by interpolating the average mark-up shown on the list date pricing chart for an Elgin watch having a cost of $25.63 and a Franklin watch having a cost of $25.96.

34 The third item on Exhibit "A" is a Franklin watch having a cost of $12.45. Since the list date pricing chart contained no such cost for Franklin watches,

the Government computed the ceiling by interpolating the average mark-up for a Roamer watch having a cost of $12.21 and a Franklin watch having a cost of $12.69.

In like manner, the fourth item of Exhibit "A" is a Franklin watch having a cost of $8.25, on which the Government computed a ceiling by interpolating the average mark-up of two Medana watches, one of which had a cost of $1.30 and the other $8.29.

The fifth overcharge item was a Franklin watch having a cost of $29.95. The ceiling for this item was computed by averaging the mark-up for a Gruen costing $29.35, and an Elgin costing $30.08.

The sixth item was a Franklin watch costing $15.95 and the ceiling therefor was computed by using two Benrus watches, one of which cost $15.93 and the other $16.41.

The seventh item was a Franklin watch costing $19.15. While the list date pricing chart lists no Franklin watch with such cost, the chart does list an Elgin watch having the precise cost. So the Government used the mark-up for the Elgin watch.

The eighth overcharge item is a Franklin watch also having a cost of $19.15, for which the Government used the same Elgin watch.

35 The ninth overcharge item is a Franklin watch with a cost of $19.95 and for which a ceiling was computed by using prices charged for an Elgin watch costing $19.65, and Benrus costing $20.53.

The tenth overcharge item is a Franklin watch costing $15.95. Ceiling for that watch was fixed by using two Benrus watches, one of which had a cost of $15.93 and the other a cost of $16.41.

32

The foregoing illustrations are typical and examination of other enumerated overcharge items will reveal that ceilings were in all costs calculated by using cost prices on an entirely different class of merchandise.

The effect of such action and such application of the regulations is to require Schneer's to abandon its traditional business and pricing policies and adopt for nondescript watches an entirely different mark-up and pricing policy.

(S.) HARRY K. STERN.

Sworn to and subscribed before me this 30th day of November, 1953.

(Seal) (S.) ROSE SCHREIBER,
Notary Public, State at Large, Georgia.

My Commission Expires Aug. 6, 1954.
Filed Feb. 25, 1954.

36 In United States District Court

AFFIDAVIT OF HAMILTON B. STEPHENS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed March 15, 1954

STATE OF GEORGIA,
COUNTY OF FULTON:

In person appeared before the undersigned attesting officer duly authorized to administer oaths, HAMILTON B. STEPHENS, who on oath deposes and says as follows:

I was a Special Agent-Attorney with the Office of Price Stabilization, Atlanta, Georgia, in the year 1952 and as such made inspections and investigations to determine compliance with the various Ceiling Price Regulations promulgated by the Office of Price Stabilization.

During the course of my employment with the Office of Price Stabilization I had occasion to become familiar with Schneer's Atlanta, Inc., defendant in this action, and various other jewelry concerns in the State of Georgia. I made an audit of defendant's business and determined certain overcharges in the sale of watches for the month of March, 1952 and computed overcharges amounting to $328.94.

Defendant filed with the Office of Price Stabilization a pricing chart under Ceiling Price Regulation 7 which was used as the basis for computing overcharges. Defendant furnished and filed this pricing chart in accordance with responsibility placed on it by Ceiling Price Regula-
37 tions. Defendant is therefore bound by its pricing chart and to the best of my knowledge and belief defendant never submitted a new pricing chart or other amendment to the one submitted, which it could have done.

It is my opinion that the cost of these watches to the Franklin Corporation, as mentioned in affidavit of Harry Stern has no bearing on the matter of the overcharges in this case, as the only pertinent thing is the cost to the retailer or whoever sold the watches in the base period. The regulation governing sales of watches was based on the price the watches sold for during the base period and what the percentage markup was during the base period.

To the best of my knowledge and belief Section 402(g) of the Defense Production Act of 1950 referred only to practices established in an industry and such practices must be shown to be industry-wide rather than in one separate business establishment.

I have read the affidavit of Mr. Harry Stern and even if all of the facts set out therein were uncontroverted, it is still only saying that the pricing method under the Regulation worked a hardship on Schneer's. Even if a hardship was worked on Schneer's it would not mean that its business practices were required to be changed by the Regulation.

(S.) HAMILTON B. STEPHENS.

Sworn to and subscribed before me this 12 day of March, 1954.

(S.) CHARLES H. BRUCE,
Notary Public, Fulton County, Ga.

Filed Mar. 15, 1954.

38 In United States District Court

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—September 14, 1954

Defendant filed motion for summary judgment on February 25, 1954. Upon oral argument the sole ground urged was that the defendant in this case had the right to attack in this court certain regulations enacted pursuant to the Defense Production Act of 1950. Defendant contended that, said Act having been repealed, it is no longer necessary for defendant to pursue the administrative remedies therein contained, especially since no savings clause to that effect was contained in the repealing Act.

No cases are cited by defendant expressly sustaining its position. That defendant's rights must be urged before the Emergency Court of Appeals has been recognized in several decisions since repeal of the Defense Production Act, and this Court is of the opinion that since the Emergency Court of Appeals still exists, defendant's attack upon the regulations herein involved must be urged before that court.

Said motion for summary judgment is therefore overruled and denied.

This the 14th day of September, 1954.

FRANK A. HOOPER,
United States District Judge.

Filed September 14, 1954.

39 In United States District Court

CONSENT JUDGMENT—March 25, 1955

It appearing to the Court that the Attorney General of the United States has, on behalf of the United States of America, authorized a compromise settlement of the above-styled case in the sum of $3,032.76, and that such settlement is agreed and consented to by defendant, at SCHNEER'S ATLANTA, INC. it is hereby

CONSIDERED, ORDERED AND ADJUDGED that plaintiff, United States of America, do have and recover of defendant, SCHNEER'S ATLANTA, INC., the sum of $3,032.76, plus costs.

It is stipulated and agreed by the parties that any right defendant may have to appeal to the Emergency Court of Appeals, Office of Defense Mobilization or United States Court of Appeals as to the validity of the Office of Price Stabilization regulation involved is reserved and protected.

This 25th day of March, 1955.

(S.) FRANK A. HOOPER,
United States District Judge.

Consented to:

(S.) JAMES W. DORSEY,
United States Attorney.

(S.) CHARLES D. READ, JR.,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

(S.) M. H. BLACKSHEAR, JR.,
HAAS, HOLLANDER & BLACKSHEAR,
Attorneys for Defendant.

Filed March 25, 1955.

40 In United States District Court

NOTICE OF APPEAL—Filed May 23, 1955

Notice is hereby given that SCHNEER'S ATLANTA, INC., the defendant named above, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this action on March 25, 1955.

This 23rd day of May, 1955.

(S.) M. H. BLACKSHEAR, JR.,
Attorney for Defendant.

HAAS, HOLLAND & BLACKSHEAR,
Attorneys-at-Law
1116 First National Bank Building,
Atlanta, Georgia,
Of Counsel for Defendant.

Filed May 23, 1955.

41 In United States District Court

ORDER ALLOWING MOTION TO EXTEND TIME FOR FILING THE RECORD ON APPEAL AND DOCKETING THE APPEAL—June 21, 1955

Motion of the defendant, Schneer's Atlanta, Inc., having been considered, IT IS ORDERED that the motion be granted and the period for filing the record on appeal and docketing the appeal is hereby extended to 70 days from the date of filing the notice of appeal.

This 21st day of June, 1955.

(S.) FRANK A. HOOPER,
United States Judge.

Motion omitted.

Filed June 21, 1955.

42 In United States District Court

DESIGNATION OF THE RECORD PURSUANT TO RULE 75, RULES OF CIVIL PROCEDURE—Filed June 21, 1955

The appellant in the present case designates the following portions of the record, proceedings and evidence to be included as the record on appeal:

1. Complaint of the United States of America, filed February 19, 1953.
2. Appellant's answer to complaint filed March 16, 1953.
3. Appellant's motion for summary judgment filed February 25, 1954.
4. Affidavit of Harry K. Stern in support of motion for summary judgment filed February 25, 1954.
5. Affidavit of Hamilton B. Stephens, Special Agent-Attorney, Office of Price Stabilization, in opposition to motion for summary judgment filed March 12, 1954.
6. Order of Court denying appellant's motion for summary judgment filed September 14, 1954.
7. Consent judgment approved by Court and filed March 25, 1955.
8. Statement of points.

Appellant relies upon the following points, to-wit:

(a) The United States District Court for the Northern District of Georgia, Atlanta Division, has
43 jurisdiction by virtue of 28 U.S.C., Section 1345, to decide the validity of regulations enacted pursuant to Defense Production Act of 1950 as amended (50 U.S.C. App. Section 2061, etc.).

(b) Ceiling price regulation No. 7 (16 F.R. 1872) as amended, issued pursuant to the Defense Production Act of 1950 is invalid in that Regulation No. 7 as applied to the Appellant under the facts deduced in this case denies the Appellant his customary percentage margin over cost of his sales and the customary charges during the period of May 24, 1950 to June 24, 1950, in violation of Sections 2102 (g) and 2102 (k) of Title 50 U.S.C.A. Appendix.

(c) Ceiling price regulation No. 7 (16 F.R. 1872) as amended, issued pursuant to the Defense Production Act of 1950 is invalid in that regulation No. 7 as applied to Appellant under the facts deduced in this case requires the Appellant to sell his materials at a ceiling price lower than the price prevailing just before the date of the regulations establishing the ceiling price, or during the period of January 25, 1951 to February 24, 1951, or between the period of January 1, 1950 to June 24, 1950, in violation of Section 2102 (d)4 of Title 50 U.S.C.A. Appendix.

44 9. The foregoing pleadings and evidence consist of all proceedings in the United States District Court for the Northern District of Geargia, Atlanta Division, that are essential to a decision by the Appellate Court, and there was no evidence other than the affidavits of Harry K. Stern and Hamilton B. Stephens introduced in the present case.

Respectfully submitted,

HAAS, HOLLAND & BLACKSHEAR,
By M. H. BLACKSHEAR, JR.,
Attorneys for Appellant.

Filed JUNE 21, 1955.

45-46 Clerk's Certificate to foregoing transcript (omitted in printing).

47 In the United States Court of Appeals for the Fifth Circuit

No. 15722

SCHNEER'S ATLANTA, INC., APPELLANT

versus

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Northern District of Georgia

OPINION OF THE COURT—February 2, 1956

Before RIVES, TUTTLE and CAMERON, Circuit Judges

TUTTLE, Circuit Judge: This is an appeal from a judgment of the District Court awarding to the Government a sum representing three times the overcharges allegedly made by appellant in the sale of watches in excess of ceiling prices fixed under the Defense Production Act of 1950.

Schneer's attacked the price regulations in question
48 as invalid as to it. The Government contended, and the District Court determined, that it had no jurisdiction to consider this question, but that only the Emergency Court of Appeals could pass on the question of validity.[1]

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[1] The trial court said: "That defendant's rights must be urged before the Emergency Court of Appeals has been recognized in several decisions since repeal of the Defense Production Act, and this Court is of the opinion that since the Emergency Court of Appeals still exists, defendant's attack upon the regulations herein involved must be urged before that court."

It is not disputed that prior to termination of the Defense Production Act of 1950, the District Courts had no power to inquire into the validity of price regulations.[2]

[2] §2108. Jurisdiction of courts to determine validity of regulations—(a) Action in Emergency Court of Appeals after denial of protest

* * * * *

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of Title 28. The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order relating to price controls, issued under this title [sections 2101-2110 of this Appendix], and of any provision of any such regulation or order. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation or order relating to price controls, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title [said sections] authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

(e) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 409 or 706 of this Act [sections 2101-2110 of this Appendix], the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the

49 The sole narrow issue presented here is whether the termination of the Defense Production Act rendered inoperative this provision placing exclusive juris-

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President setting forth objections to the validity of any provision which the defendant is alleged to have violated or conspired to violate. The court in which the proceeding is pending shall grant such leave with respect to any which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 407 of this title [section 2107 of this Appendix.] Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation or order complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the President or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b), (c), and (d) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.

(2) In any proceeding brought pursuant to section 409 or 706 of this Act [section 2109 or 2156 of this Appendix] or section 371 of Title 18, involving an alleged violation of any provision of any such regulation or order, the court shall stay the proceeding—

(i) during the period within which a complaint may be filed in the Emergency Court of Appeals pursuant to leave granted under paragraph (1) of this subsection with respect to such provision;

(ii) during the pendency of any protest properly filed by the defendant under section 407 of this title [section 2107 of this Appendix] prior to the institution of the proceeding under section 409 or 706 of this Act [section 2109 or 2156 of this Appendix] or section 371 of Title 18, setting forth objections to the validity of such provision which the court finds to have been made in good faith; and

diction in the Emergency Court. There can be no doubt that if it did then appellant would have the right to have the District Court, whose jurisdiction the Government invoked

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(iii) during the pendency of any judicial proceeding instituted by the defendant under this section with respect to such protest or instituted by the defendant under paragraph (1) of this subsection with respect to such provision, and until the expiration of the time allowed in this section for the taking of further proceedings with respect thereto.

Notwithstanding the provisions of this paragraph, stays shall be granted thereunder in civil proceedings only after judgment and upon application made within five days after judgment. Notwithstanding the provisions of this paragraph, in the case of a proceeding under section 409 (a) or 706(a) of this Act [section 2109 (a) or 2156 (a) of this Appendix] the court granting a stay under this paragraph shall issue a temporary injunction or restraining order enjoining or restraining, during the period of the stay, violations by the defendant of any provision of the regulation or order involved in the proceeding. If any provision of a regulation or order is determined to be invalid by judgment of the Emergency Court of Appeals which has become effective in accordance with section 408(b) of this title [subsection (b) of this section], any proceeding pending in any court shall be dismissed, and any judgment in which proceeding vacated, to the extent that such proceeding or judgment is based upon violation of such provision. Except as provided in this subsection, the pendency of any protest under section 407 of this title [section 2107 of this Appendix], or judicial proceedings under this section, shall not be grounds for staying any proceeding brought pursuant to section 409 or 706 of this Act [section 2109 or 2156 of this Appendix] or section 371 of Title 18; nor, except as provided in this subsection, shall any retroactive effect be given to any judgment setting aside a provision of a regulation or order issued under this title [sections 2101-2110 of this Appendix].

50 U. S. C. A. Appendix, §2108 (d) (e).

to seek a penalty against appellant, pass on the
50 legality of the regulations on which the Government's claim was based.

The Emergency Court was in existence at the time of the enactment of the Defense Production Act.[3] It was given jurisdiction over matters relating to regulations of the later law by Section 408 (c), (d) and (e) of that Act.[4] That law was in effect when the proceeding here was commenced by the Government on February 19, 1953. It expired by its own terms at the close of April 30, 1955.
51 On February 25, 1954, appellant filed a motion for summary judgment upon the pleadings and upon the affidavit of its president, making its attack on the validity of the regulations as to it. On September 14, 1954, the District Court denied the motion for summary judgment without passing on the merits of the question of validity, holding that it was without jurisdiction to consider the question.

The parties here apparently concede that there was no saving clause contained in the Act itself that would have the effect of continuing in effect the limitation on the District Court's jurisdiction,[5] and we must conclude, therefore, that if this limitation outlived the repeal of the statute creating it this must follow from what is known as the general Saving Statute.[6] It will be noted that the first sen-

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[3] It was first created by the Emergency Price Control Act of 1942. 50 U. S. C. A. Appendix, §924(c).

[4] 50 U. S. C. A. Appendix, §2108 (c), (d) and (e).

[5] The Government's brief does not even discuss the effect of the termination of the law, but treats the matter simply as if the entire law were still in force.

[6] 1 U. S. C. A.

§109. Repeal of statutes as affecting existing liabilities "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall

tence of the law dates from 1871 and only the second sentence is new. It merely makes the same rule applicable to a "temporary statute." We may, therefore, look to cases construing the first sentence to determine the answer to our question. This question, in its simplest form, is whether this sentence in the savings statute continued Sec-
52 tion 2108 (d) and (e) [7] in life for the purpose of conferring this particular jurisdiction on the Emergency Court of Appeals and denying it to the District Court. Unless it did so keep it in life, then the case is concluded in appellant's favor under the principle announced by the Supreme Court in *Bruner v. U. S.*, 343 U. S. 112: "This rule—that, when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law—has been adhered to consistently by this Court."

In that opinion the court then concluded by a holding that, it seems clear to us, proceeded to answer the question itself. It held that the general savings statute does not preserve a right to have a claim heard by any particular tribunal, but preserves only the right itself. This was the holding in *Hollowell v. U. S.*, 239 U. S. 506, wherein was involved a statute giving the Secretary of the Interior the authority to ascertain the heirs of certain Indian intestates. The court disposed of the plaintiff's argument that it had

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so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

[7] Supra, Note 4.

a right to have the district court hear his claim (as was the procedure when the claim arose), and that this right was preserved by the general savings statute, by saying that the Act conferring jurisdiction upon the Secretary "takes away no substantive right but simply changes the tribunal that is to hear the case." 239 U. S. 506, 508.

Although the subsequent case of *De La Rama Steamship Co. v. U. S.*, 344 U. S. 386, does stress the fact that too much significance has been attached to the separateness of "right" from "remedy" where the repealed law
53 combines the elements of both, there is nothing in that case to modify the Bruner holding. In De La Rama the court pointed out that a denial of the option of the libelant to present its right of action in admiralty or in the Court of Claims would "mutilate that right" because in admiralty interest arises from the time of filing the libel, whereas it follows only upon entry of judgment in the Court of Claims.

Moreover the language of the savings clause itself shows its clear applicability to a statute which gives a particular procedural benefit coupled with a substantive right, as in De La Rama; whereas, the statute does not by its terms apply to a statute, or part of a statute, which merely limits, within the federal system, the courts which can determine the legality of government regulations. The section of the Defense Production Act which imposes such limitation is not one which "creates any penalty, forfeiture or liability," and the perpetuation of this section is not needed to sustain any "proper action or prosecution for the enforcement of such penalty, forfeiture or liability." It is not, then, as was the statute before the Supreme Court in De La Rama, one whose perpetuation was expressly within the language of the savings statute.

Here, neither party is deprived of any substantive right or benefit by a holding, contrary to Bruner and Hallowell, that the procedural provision of the Defense Production Act of 1950 survived its repeal, because it is of convenience to the defendant and of no greater burden to the Government to have the entire enforcement suit litigated in the

same court, especially since it is apparent from the fact of repeal that the great urgency of enforcement that
54 provided the justification for establishing jurisdiction in a special tribunal no longer exists. Matters may now follow their normal and ordinary course, in which the Court which is called upon to enforce a regulation shall have the opportunity to pass in the first instance upon its validity.

We do not pass on the question of validity of the regulations in question, but return the case for the District Court to do this.

The judgment is reversed and the case remanded for action by the trial court consistent with this opinion.

Reversed and Remanded.

55 No. 15722

SCHNEER'S ATLANTA, INC.,

versus

UNITED STATES OF AMERICA

JUDGMENT—February 2, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for action by the trial court consistent with the opinion of this Court.

56 Clerk's Certificate to foregoing transcript omitted in printing.

ORDER ALLOWING CERTIORARI—Filed June 11, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1956 992349 44

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

SCHNEER'S ATLANTA, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above cause on February 2, 1956.

OPINIONS BELOW

The judgment of the United States District Court for the Northern District of Georgia was entered without opinion (R. 39). The opinion of the United States Court of Appeals for the Fifth Circuit (App. A, *infra*, pp. 19–26) is reported at 229 F. 2d 612.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on February 2, 1956

(App. A, *infra,* p. 27). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the exclusive jurisdiction of the Emergency Court of Appeals to determine the validity of ceiling-price regulations issued under the Defense Production Act ended with the termination of the Act, so that such regulations may now be attacked as invalid in an action for damages brought by the United States in a District Court.

STATUTES INVOLVED

The pertinent provisions of the Defense Production Act of 1950 and of the General Savings Statute, 1 U. S. C. 109, are set forth in Appendix C, *infra,* pp. 29–32.

STATEMENT

The United States brought this action on February 19, 1953, to recover treble the amount of overcharges which the respondent was alleged to have received for watches, during the year preceding the filing of the complaint, in excess of ceiling prices established by regulation under the authority of the Defense Production Act of 1950 (64 Stat. 798, as amended, 50 U. S. C. App. §§ 2061 *et seq.*) (R. 1–12).[1] The action was brought

[1] The regulation involved was Ceiling Price Regulation 7, and Supplemental Regulation 1 thereto (16 F. R. 1872, 1895), as amended.

under Section 706 (b) of the Defense Production Act (64 Stat. 817, 50 U. S. C. § 2156 (b)), and 28 U. S. C. § 1345. The respondent contended that the regulation as applied to it was invalid (R. 13), because its inventory at the base-date was atypical (R. 18), and because the regulation as applied ignored its practice of using a different percentage mark-up for nationally-advertised watches and "nondescript" watches (R. 19–21). The respondent moved for summary judgment (R. 23), contending that, because of the termination of the applicable provisions of the Defense Production Act, the District Court had jurisdiction to determine the validity of the regulation (R. 38). This motion was denied, the court holding that any attack upon the regulation must be made in the Emergency Court of Appeals (R. 38). A judgment in favor of the United States for $3,032.76 was then entered on March 25, 1955, on a compromise settlement, it being agreed "that any right defendant may have to appeal to the Emergency Court of Appeals, Office of Defense Mobilization or United States Court of Appeals as to the validity of the Office of Price Stabilization regulation involved is reserved and protected" (R. 39).

The respondent attempted to perfect an appeal to the United States Emergency Court of Appeals, but the complaint was not filed until April 26, 1955, and that court dismissed the complaint as untimely (App. B., *infra*, p. 28).

The respondent then appealed to the United States Court of Appeals for the Fifth Circuit from the judgment of the District Court (R. 40). That court on February 2, 1956, reversed the judgment of the District Court. It recognized that, prior to the termination of the Defense Production Act, the District Courts had no jurisdiction to determine the validity of price regulations, such authority being reserved to the Emergency Court of Appeals (App. A, *infra,* p. 20). It held, however, that the exclusive jurisdiction of the Emergency Court had expired upon the termination of the Act, that this deprived neither party of any substantive right, and that such a result was therefore not prevented by any savings provision (App. A, *infra,* pp. 23–26). The court held, moreover, that upon the expiration of the exclusive jurisdiction of the Emergency Court District Courts were empowered to determine the validity of price regulations, and remanded the case for such a determination (App. A, *infra,* pp. 21–22, 26).

REASONS FOR GRANTING THE WRIT

This action was brought by the United States to recover damages for respondent's sales in excess of ceiling prices established by regulation under the Defense Production Act of 1950 (64 Stat. 798, as amended, 50 U. S. C. §§ 2061 *et seq.*). Like the Emergency Price Control Act of 1942,

on which it was closely modelled, the Defense Production Act centered the review of price regulations in a single tribunal and, for this purpose, in its Section 408 (64 Stat. 808, as amended, 50 U. S. C. App. § 2108, App. C, *infra*, pp. 29–30), it continued the Emergency Court of Appeals, originally established under the earlier act (56 Stat. 31, as amended, 50 U. S. C. App. § 924). A price regulation could be challenged by an action brought in that court following either the denial of a protest against the regulation (§ 408 (a)) or a judgment in an action brought for a violation of the regulation (§ 408 (d)), but the validity of the regulation could be tested in no other manner. "The Emergency Court of Appeals," said the Defense Production Act (§ 408 (e)),

> and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any such regulation * * *. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title ["Title IV—Price and Wage Stabilization"] * * * authorizing the issuance of such regulations or orders, or any provision of any such reg-

> ulation or order, or to restrain or enjoin the enforcement of any such provision.

This section terminated, together with the price and wage stabilization provisions of the Act, on April 30, 1953 (§ 717, 64 Stat. 822, as amended, 50 U. S. C. App. § 2166). The question presented by this petition is whether, in view of this termination, the Emergency Court still retains exclusive jurisdiction to determine the validity of price regulations.

1. This same question was answered affirmatively by this Court upon the termination of the Emergency Price Control Act of 1942. *Woods* v. *Hills,* 334 U. S. 210. In that case, the Price Administrator brought an action to recover treble damages for the violation of a maximum-rent order. The District Court held that the Administrator had not proved the validity of the order, and entered judgment for the defendant. The Administrator appealed, but between the date of judgment and the appeal the Price Control Act expired. The Court of Appeals for the Tenth Circuit therefore certified the following question (among others) to this Court (334 U. S. at 212–213):

> (1) On remand, will the District Court of the United States for the District of Kansas, First Division, have jurisdiction to determine the validity of the second rent order and should we direct the District

Court to pass on the validity of such rent order?

This Court held that, prior to the termination of the Price Control Act, the Emergency Court had had exclusive jurisdiction to determine the validity of the rent order, and it continued (334 U. S. at 214):

> The Emergency Price Control Act was to terminate on June 30, 1947. Section 1 (b), which fixed that date, expressly provides that "as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense." 56 Stat. 24. Since the offense complained of in the case at bar occurred before the termination date, § 1 (b) would apply and the Emergency Court of Appeals would still have exclusive jurisdiction to pass on the validity of the second rent order, if additional prerequisites set forth in § 204 (e) (1) of the statute were satisfied.[2]

[2] Footnote by the Court omitted.

The reference to additional prerequisites did not mean that District Courts would no longer be precluded from determining validity in actions for violations if such prerequisites were not met. The reference was to the second question certified: whether the Emergency Court itself still

See also *150 East 47th Street Corporation* v. *Porter,* 156 F. 2d 541 (Em. C. A.). The savings provision of the Defense Production Act is, as we shall show, substantially identical to that in the Emergency Price Control Act, and similarly requires the conclusion that the Emergency Court of Appeals retains exclusive jurisdiction to determine the validity of price regulations issued under the authority of the Defense Production Act.

Section 706 (b) of the Defense Production Act (64 Stat. 818, 50 U. S. C. App. § 2156 (b), App. C, *infra,* p. 32) provided in part that:

> The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order.[3]

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retained jurisdiction where the order was challenged after the entry of judgment in an action for violation. It was apparently the understanding of the Court that, even if the Emergency Court did not retain such jurisdiction, the District Courts would still be precluded, the Court noting, but not resolving, the question whether this might constitute a denial of due process. 334 U. S. at 216–217.

[3] The court below said (App. A., *infra,* p. 23) that the "parties here apparently concede that there was no saving clause contained in the Act itself that would have the effect

Thus, the express savings clause in the Defense Production Act, like that in the Emergency Price Control Act, refers to "any suit, action, or prosecution * * * with respect to any right, liability, or offense incurred or committed prior to the termination date."[4] The only difference between the provisions is that the Defense Production Act provides that termination of the authority granted by the statute "shall not operate to defeat any suit, action, or prosecution" while the earlier act states that the provisions of the act "shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution." In the one case, an action shall not be defeated; in the other, it shall be sustained. This, we submit, amounts to two ways of saying one thing, and the effect of both provisions is precisely the same.

2. In *Haldeman Creamery, Inc.* v. *Kendall,* 208 F. 2d 360, the Emergency Court considered the question whether its own jurisdiction continued

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of continuing in effect the limitation on the District Court's jurisdiction, * * *." However, Section 706 (b) was called to the Court's attention by respondent (which argued that it was not the same as Section 1 (b) of the Price Control Act), and apparently also in a memorandum filed by the United States Attorney and accepted by the court.

[4] The exact language of Section 1 (b) of the Price Control Act is "any proper suit, action, or prosecution with respect to any such right, liability, or offense," the word "such" referring to "offenses committed, or rights or liabilities incurred, prior to termination date." See quotation from *Woods* v. *Hills, supra,* p. 7.

after the termination of the Defense Production Act, and on the strength of Section 706 (b) held that it did, and therefore continued to function.[5] That court, of course, was not presented with the issue whether its jurisdiction continued to be exclusive.[6] The Court of Appeals for the First Circuit, however, has held, again under Section 706 (b), that the jurisdiction of the Emergency Court to determine the validity of price regulations does remain exclusive, notwithstanding the termination of Section 408. *Bryne* v. *United States*, 218

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[5] The court said that Section 706 (b) "preserves the jurisdiction of this court to make an adjudication of the present case, in view of the pendency of this enforcement suit." Since Section 706 (b) provides that termination shall not defeat actions "whether theretofore or thereafter commenced," it would seem to make no difference that an action was pending at the date of termination. In any event, it may be noted that the instant action was brought on February 19, 1953, two months before Title IV of the Act expired (R. 8).

[6] It would seem, however, that the jurisdiction of the Emergency Court and its exclusive nature, both arising from the same section, must stand or fall together. Cf. *150 East 47th Street Corporation* v. *Porter*, 156 F. 2d 541, 545 (Em. C. A.).

Similarly, while the court below did not say so its decision would seem clearly to require the conclusion that the Emergency Court no longer has *any* jurisdiction in price-regulation cases. In this respect, the decision is in conflict with every decision of the Emergency Court in such cases since April 30, 1953. See *Victory Packing Co.* v. *Kendall*, 208 F. 2d 358, *Northwest Steel Rolling Mills, Inc.* v. *Kendall*, 210 F. 2d 283, certiorari denied, 347 U. S. 960, *George V. Tribe Co.* v. *Kendall*, 210 F. 2d 658, *Lambert's Point Docks, Inc.* v. *Kendall*, 215 F. 2d 455, *Kershaw* v. *Kendall*, 215 F. 2d 653, *Tanners Hides Inc.* v. *Kendall*, 219 F. 2d 710, *Lambert's Point Docks, Inc.* v. *Kendall*, 224 F. 2d 284.

F. 2d 327. At least two other circuits, without directly considering the question here involved, have held in cases since April 30, 1953, that the Emergency Court retains exclusive jurisdiction to determine the validity of price regulations. *United States* v. *Excel Packing Co.*, 210 F. 2d 596 (C. A. 10), certiorari denied, 348 U. S. 817; *United States* v. *Dix Box Co.*, No. 14432, C. A. 9, March 31, 1956. In both cases, the District Courts had ruled the regulations invalid and the Courts of Appeals reversed. Both decisions are in tacit conflict with the decision in the instant case.

3. These conflicting decisions of the Emergency Court and the First, Ninth, and Tenth Circuits seem clearly correct. Prior to the termination of the price control parts of the Defense Production Act, an action for the violation of a price regulation brought by the United States in a District Court could not be defeated by a determination by that court that the regulation was invalid. If now the action can be so defeated, it must be by reason of the termination. Yet, Section 706 (b) (App. C, *infra*, p. 32) expressly provides that the termination of the act "shall not operate to defeat any suit, action, or prosecution" brought for a violation occurring before the act expired. Moreover, the ability of the respondent to have a regulation's validity determined by the Emergency Court after the entry of a judgment against him in a District Court

was a special protection conferred upon him by Section 408 (d) (App. C, *infra*, pp. 31–32), a protection which Congress was under no obligation to provide since the regulation could have been attacked, after its issuance, under the protest procedure.[7] Even if the jurisdiction exclusively conferred upon the Emergency Court had expired with the statute, it would not follow that such jurisdiction was conferred upon the District Courts. See *Woods* v. *Hills*, 334 U. S. 210, 214–217. Clearly, then, the postjudgment action in the Emergency Court is an action "with respect to a right" of the respondent "incurred prior to the termination date," which would be defeated by the termination of the Act if the Emergency Court's jurisdiction expired at the same time—contrary to the provisions of Section 706 (b).

4. In addition to the special savings clause in Section 706 (b), the exclusive jurisdiction of the Emergency Court is preserved by the General Savings Statute, 1 U. S. C. § 109 (App. C, *infra*, p. 32), which provides in part:

> The expiration of a temporary statute shall not have the effect to release or extinguish

[7] Congress might constitutionally have restricted any judicial determination of the regulation's validity to the review of a denied protest under Section 408 (a). *Yakus* v. *United States*, 321 U. S. 414. Indeed, there was no provision for post-judgment determination in the Defense Production Act as it was initially passed by the House, 96 Cong. Rec. 12112, the procedure being added at the insistence of the Senate. 96 Cong. Rec. 14131.

> any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

This statute is not made inapplicable by the inclusion of a special savings clause "unless the special character of that clause by plain implication cuts down the scope and operation of the general rule" (*Hertz* v. *Woodman,* 218 U. S. 205, 218), and this Court itself has recently said that "we find no express, or even implied, provision in the [Defense Production] Act contrary to the policy of the general savings statute." *Allen* v. *Grand Central Aircraft Company,* 347 U. S. 535, 554.[8]

In the *Grand Central* case, the respondent contended that the National Enforcement Com-

[8] We have argued above that no significance can be attributed to the difference between the language of Section 1 (b) of the Emergency Price Control Act and the language of Section 706 (b) of the Defense Production Act. See p. 9, *supra.* Should any distinction lie, however, between the effects of those provisions, we submit that none exists between the words of the earlier act, which in *Woods* v. *Hills* this Court held continued the exclusive jurisdiction of the Emergency Court, and those in the General Savings Statute, since both provide that the statute "shall be treated as still remaining in force for the purpose of sustaining any proper action."

mission, an administrative body established under the authority of the Defense Production Act, no longer had authority to determine the amount of past payments in violation of wage ceilings because of the termination of the substantive provisions of the Act. This Court held not only that the liability of the respondent remained, but that the means provided for enforcing that liability continued as well. "The precise object of the general savings statute," it said, "is to prevent the expiration of a temporary statute from cutting off appropriate measures to enforce the expired statute in relation to violations of it, or of regulations issued under it, occurring before its expiration" (347 U. S. at 554–555).

The holding of this Court in *Grand Central, supra,* as well as that in *Woods* v. *Hills, supra,* clearly refutes the ruling by the court below that with respect to the Defense Production Act the savings provisions preserved only the claims but did not continue the jurisdiction of a specific tribunal provided by that Act for the enforcement of such claims. In addition, we submit, its ruling misinterpreted the whole tenor of the teaching of this Court on the subject of savings provisions. It is true, as the opinion below stresses, that in *Hallowell* v. *Commons,* 239 U. S. 506, and *Bruner* v. *United States,* 343 U. S. 112, this Court held that, when a *jurisdictional* provision is repealed, the court in question loses

its jurisdiction at once and even cases brought for claims arising before the repeal fall with it. But in those cases, as this Court said in *De La Rama S. S. Co.* v. *United States,* 344 U. S. 386, 390, it was "the very purpose of Congress * * * to take away jurisdiction * * *. If the aim is to destroy a tribunal or to take away cases from it, there is no basis for finding saving exceptions unless they are made explicit." There is not the slightest indication of any such purpose or aim with reference to the jurisdiction of the Emergency Court. Rather, the termination of the Defense Production Act is wholly comparable to the repeal involved in the *De La Rama* case, of which the Court said, "In repealing the War Risk Insurance Act among numerous other statutes, Congress was concerned not with jurisdiction, not with the undesirability of the district courts and the suitability of the Court of Claims as a forum for suits under that Act. It was concerned with terminating war powers after the 'shooting war' had terminated" (344 U. S. at 391). "Where the object of Congress," the Court also said (344 U. S. at 390) "was to destroy rights in the future while saving those which have accrued, to strike down enforcing provisions that have special relation to the accrued right and as such are part and parcel of it, is to mutilate that right and hence to defeat rather than further the legislative purpose."

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If the decision below should stand, the purposes of Congress would be patently frustrated. The court below felt that the expiration of the substantive provisions of the Act showed "that the great urgency of enforcement that provided the justification for establishing jurisdiction in a special tribunal no longer exists." But this statement, which considers only one factor which led to the establishment of exclusive jurisdiction, ignores the equally important desire of Congress for expert and uniform interpretation of the Act, achieved by restricting the determination of validity to a single court composed of judges experienced in the problem. That this consideration was very significant appears from the provision that District Courts were not only precluded from enjoining any regulation, but were prevented from determining the validity of the regulation in an action for damages. Had urgency alone been the motivating factor, there would have been no necessity for this additional restriction. Yet the importance attached to this restriction is attested by the fact that while, as originally passed by the Senate, the Defense Production Act would have permitted District Courts to determine validity in enforcement actions (Sen. Rep. 2250, 81st Cong., 2d Sess., p. 40), this authority was stricken at the specific insistence of the House. 96 Cong. Rec. 14131. The uniformity which Congress thus sought to guar-

antee in determinations of validity could not be achieved if, upon the termination of the statute, any court might proceed to decide such questions for itself. Indeed, such a result might place a premium upon obduracy by enabling an offender to avoid, by delay, the tribunal which Congress specified.

5. The price stabilization program under the Defense Production Act was in force in a period of economic unsettlement consequent upon the hostilities in Korea. During the life of the program, primary attention was of necessity directed at administering and adjusting the provisions of the Act and regulations. The bulk of the enforcement proceedings in natural course only began at the end of the period, and any special statutory provision relating to these proceedings would have been futile if it expired with the end of the substantive program. A great many proceedings still remain. In these circumstances, and in the context of a legislative mandate for uniform enforcement, the necessity that the error of the court below be cured becomes apparent. Especially is this so because of the effect of the decision of the Fifth Circuit in denying the jurisdiction of the Emergency Court. If the latter properly has exclusive jurisdiction over all such cases, the error of the court below perpetuates itself by channeling actions into the wrong forum.

CONCLUSION

In summary, we submit that the decision of the court below is directly contrary to this Court's decisions in *Woods* v. *Hills, supra,* and *Allen* v. *Grand Central Aircraft, supra;* that it misinterprets and misapplies the principles laid down by the Court in *De La Rama S. S. Co.* v. *United States, supra;* that it is in direct conflict with decisions of the Emergency Court and the Courts of Appeals for the First, Ninth, and Tenth Circuits; that it disrupts the uniform interpretation of the Defense Production Act; and that its effect is to deny, since April 30, 1953, jurisdiction to determine the validity of regulations to the only court which has such jurisdiction, and this at the close of the substantive program at the time when many enforcement proceedings are brought. For these reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

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MAY, 1956.

APPENDIX A

In the United States Court of Appeals for the Fifth Circuit

No. 15722

(February 2, 1956)

SCHNEER'S ATLANTA, INC.

v.

UNITED STATES OF AMERICA

Appeal from the United States District Court for the Northern District of Georgia

Before RIVES, TUTTLE and CAMERON, *Circuit Judges.* TUTTLE, *Circuit Judge:* This is an appeal from a judgment of the District Court awarding to the Government a sum representing three times the overcharges allegedly made by appellant in the sale of watches in excess of ceiling prices fixed under the Defense Production Act of 1950. Schneer's attacked the price regulations in question as invalid as to it. The Government contended, and the District Court determined, that it had no jurisdiction to consider this question, but that only the Emergency Court of Appeals could pass on the question of validity.[1]

[1] The trial court said: "That defendant's rights must be urged before the Emergency Court of Appeals has been recognized in several decisions since repeal of the Defense Production Act, and this Court is of the opinion that since the Emergency Court of Appeals still exists, defendant's attack upon the regulations herein involved must be urged before that court."

It is not disputed that prior to termination of the Defense Production Act of 1950, the District Courts had no power to inquire into the validity of price regulations.[2]

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[2] § 2108. Jurisdiction of courts to determine validity of regulations—(a) Action in Emergency Court of Appeals after denial of protest

* * * * *

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of Title 28. The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order relating to price controls issued under this title [sections 2101–2110 of this Appendix], and of any provision of any such regulation or order. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation or order relating to price controls, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title [said sections] authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

(e) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 409 or 706 of this Act [sections 2101–2110 of this Appendix], the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency

The sole narrow issue presented here is whether the termination of the Defense Production Act rendered inoperative this provision placing exclusive jurisdiction in the Emergency Court. There can be no doubt that if it did then appel-

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Court of Appeals a complaint against the President setting forth objections to the validity of any provision which the defendant is alleged to have violated or conspired to violate. The court in which the proceeding is pending shall grant such leave with respect to any which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 407 of this title [section 2107 of this Appendix]. Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation or order complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the President or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b), (c), and (d) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.

(2) In any proceeding brought pursuant to section 409 or 706 of this Act [section 2109 or 2156 of this Appendix] or section 371 of Title 18, involving an alleged violation of any provision of any such regulation or order, the court shall stay the proceeding—

(i) during the period within which a complaint may be filed in the Emergency Court of Appeals pursuant to leave granted under paragraph (1) of this subsection with respect to such provision;

(ii) during the pendency of any protest properly filed by the defendant under section 407 of this title [section 2107 of this Appendix] prior to the institution of the proceeding under section 409 or 706 of this Act [section 2109 or 2156 of this Appendix] or section 371 of Title 18, setting forth objections to the validity of such provision which the court finds to have been made in good faith; and

lant would have the right to have the District Court, whose jurisdiction the Government invoked to seek a penalty against appellant, pass on the legality of the regulations on which the Government's claim was based.

(iii) during the pendency of any judicial proceeding instituted by the defendant under this section with respect to such protest or instituted by the defendant under paragraph (1) of this subsection with respect to such provision, and until the expiration of the time allowed in this section for the taking of further proceedings with respect thereto.

Notwithstanding the provisions of this paragraph, stays shall be granted thereunder in civil proceedings only after judgment and upon application made within five days after judgment. Notwithstanding the provisions of this paragraph, in the case of a proceeding under section 409 (a) or 706 (a) of this Act [section 2109 (a) or 2156 (a) of this Appendix] the court granting a stay under this paragraph shall issue a temporary injunction or restraining order enjoining or restraining, during the period of the stay, violations by the defendant of any provision of the regulation or order involved in the proceeding. If any provision of a regulation or order is determined to be invalid by judgment of the Emergency Court of Appeals which has become effective in accordance with section 408 (b) of this title [subsection (b) of this section], any proceeding pending in any court shall be dismissed, and any judgment in which proceeding vacated, to the extent that such proceeding or judgment is based upon violation of such provision. Except as provided in this subsection, the pendency of any protest under section 407 of this title [section 2107 of this Appendix], or judicial proceedings under this section, shall not be grounds for staying any proceeding brought pursuant to section 409 or 706 of this Act [section 2109 or 2156 of this Appendix] or section 371 of Title 18; nor, except as provided in this subsection, shall any retroactive effect be given to any judgment setting aside a provision of a regulation or order issued under this title [sections 2101–2110 of this Appendix]. 50 U. S. C. A. Appendix, § 2108 (d) (e).

The Emergency Court was in existence at the time of the enactment of the Defense Production Act.[3] It was given jurisdiction over matters relating to regulations of the later law by Section 408 (c), (d) and (e) of that Act.[4] That law was in effect when the proceeding here was commenced by the Government on February 19, 1953. It expired by its own terms at the close of April 30, 1955. On February 25, 1954, appellant filed a motion for summary judgment upon the pleadings and upon the affidavit of its president, making its attack on the validity of the regulations as to it. On September 14, 1954, the District Court denied the motion for summary judgment without passing on the merits of the question of validity, holding that it was without jurisdiction to consider the question.

The parties here apparently concede that there was no saving clause contained in the Act itself that would have the effect of continuing in effect the limitation on the District Court's jurisdiction,[5] and we must conclude, therefore, that if this limitation outlived the repeal of the statute creating it this must follow from what is known as the general Saving Statute.[6] It will be noted

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[3] It was first created by the Emergency Price Control Act of 1942. 50 U. S. C. A. Appendix, § 924 (c).

[4] 50 U. S. C. A. Appendix, § 2108 (c), (d) and (e).

[5] The Government's brief does not even discuss the effect of the termination of the law, but treats the matter simply as if the entire law were still in force.

[6] 1 U. S. C. A. § 109. Repeal of statutes as affecting existing liabilities "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be

that the first sentence of the law dates from 1871 and only the second sentence is new. It merely makes the same rule applicable to a "temporary statute." We may, therefore, look to cases construing the first sentence to determine the answer to our question. This question, in its simplest form, is whether this sentence in the savings statute continued Section 2108 (d) and (e) [7] in life for the purpose of conferring this particular jurisdiction on the Emergency Court of Appeals and denying it to the District Court. Unless it did so keep it in life, then the case is concluded in appellant's favor under the principle announced by the Supreme Court in *Bruner* v. *U. S.*, 343 U. S. 112: "This rule—that, when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law—has been adhered to consistently by this Court."

In that opinion the court then concluded by a holding that, it seems clear to us, proceeded to answer the question itself. It held that the general savings statute does not preserve a right to have a claim heard by any particular tribunal,

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treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

[7] Supra, Note 4.

but preserves only the right itself. This was the holding in *Hallowell* v. *U. S.*, 239 U. S. 506, wherein was involved a statute giving the Secretary of the Interior the authority to ascertain the heirs of certain Indian intestates. The court disposed of the plaintiff's argument that it had a right to have the district court hear his claim (as was the procedure when the claim arose), and that this right was preserved by the general savings statute, by saying that the Act conferring jurisdiction upon the Secretary "takes away no substantive right but simply changes the tribunal that is to hear the case." 239 U. S. 506, 508.

Although the subsequent case of *De La Rama Steamship Co.* v. *U. S.*, 344 U. S. 386, does stress the fact that too much significance has been attached to the separateness of "right" from "remedy" where the repealed law combines the elements of both, there is nothing in that case to modify the Bruner holding. In De La Rama the court pointed out that a denial of the option of the libelant to present its right of action in admiralty or in the Court of Claims would "mutilate that right" because in admiralty interest arises from the time of filing the libel, whereas it follows only upon entry of judgment in the Court of Claims.

Moreover the language of the savings clause itself shows its clear applicability to a statute which gives a particular procedural benefit coupled with a substantive right, as in De La Rama; whereas, the statute does not by its terms apply to a statute, or part of a statute, which merely limits, within the federal system, the courts which can determine the legality of government regu-

lations. The section of the Defense Production Act which imposes such limitations is not one which "creates any penalty, forfeiture or liability," and the perpetuation of this section is not needed to sustain any "proper action or prosecution for the enforcement of such penalty, forfeiture or liability." It is not, then, as was the statute before the Supreme Court in De La Rama, one whose perpetuation was expressly within the language of the savings statute.

Here, neither party is deprived of any substantive right or benefit by a holding, contrary to Bruner and Hallowell, that the procedural provision of the Defense Production Act of 1950 survived its repeal, because it is of convenience to the defendant and of no greater burden to the Government to have the entire enforcement suit litigated in the same court, especially since it is apparent from the fact of repeal that the great urgency of enforcement that provided the justification for establishing jurisdiction in a special tribunal no longer exists. Matters may now follow their normal and ordinary course, in which the Court which is called upon to enforce a regulation shall have the opportunity to pass in the first instance upon its validity.

We do not pass on the question of validity of the regulations in question, but return the case for the District Court to do this.

The judgment is reversed and the case remanded for action by the trial court consistent with this opinion.

Reversed and remanded.

JUDGMENT

Extract from the Minutes of February 2nd, 1956.

No. 15722

SCHNEER'S ATLANTA, INC.

v.

UNITED STATES OF AMERICA

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for action by the trial court consistent with the opinion of this Court.

* * * * *

APPENDIX B

United States Emergency Court of Appeals

No. 672

SCHNEER'S ATLANTA, INC.

v.

CHARLES H. KENDALL, ASSISTANT DIRECTOR, OFFICE OF DEFENSE MOBILIZATION

Present: MARIS, *Ch. J.*, and MAGRUDER and MCALLISTER, *JJ.*

JUDGMENT

Upon consideration of the Respondent's motion to dismiss the complaint and of the Complainant's response thereto, and the Court being of the opinion that it is without jurisdiction to entertain the complaint because of its untimely filing,

It is ordered, adjudged and decreed that the complaint be and it hereby is dismissed.

It is further ordered that the clerk of this Court transmit forthwith a certified copy of this judgment to the clerk of the United States District Court for the Northern District of Georgia.

Teste:

By the Court.

(S) J. Frederick Mattingley,

J. FREDERICK MATTINGLEY,

Acting Clerk.

APPENDIX C

Section 408 of the Defense Production Act (64 Stat. 808, as amended, 66 Stat. 303, 50 U. S. C. App. § 2108), provided as follows in pertinent part:

> (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals specifying his objections and praying that the regulation or order protested be enjoined or set aside in whole or in part. * * * Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of all questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper; to permanently enjoin or set aside, in whole or in part, the regulation or order or the amendment of or supplement to the regulation or order protested; to make and enter upon the pleadings, evidence, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the President; to dismiss the petition; or to remand the proceeding to the President for further action in accordance with the court's decree: * * *
>
> (b) The Emergency Court of Appeals is hereby continued for the purpose of the exercise of the jurisdiction granted by this title, with the powers heretofore granted by

law to such court which are not inconsistent with the provisions of this title. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this title. So far as necessary to decision the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, interpret the meaning or applicability of the terms of any official action under this title or under this Act, as amended of which this title is a part and with respect to this title, or under the Housing and Rent Act of 1947, as amended. The Court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this title.

(c) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code. The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any such regulation or order issued under this title, or under the Housing and Rent Act of 1947, as amended. Except as provided in this section, no court, Federal,

State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title, or the Housing and Rent Act of 1947, as amended, authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

(d) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 409 or 706 of this Act, section 205 or 206 of the Housing and Rent Act of 1947, as amended, or section 371 of title 18, United States Code, involving alleged violation of any provision of any such regulation or order, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the President setting forth objections to the validity of any provision which the defendant is alleged to have violated or conspired to violate. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 407 of this title. Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or

> in part the provision of the regulation or order complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the President or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b) and (c) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.
>
> * * * * *

Section 706 (b) of the Defense Production Act (64 Stat. 817, 50 U. S. C. App. 2156 (b)), provided as follows in pertinent part:

> * * * The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether heretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. * * *

The General Savings Statute, 1 U. S. C. 109, is as follows in pertinent part:

> * * * The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1955.

No. [redacted] 75

UNITED STATES OF AMERICA,
Petitioner,

versus

SCHNEER'S ATLANTA, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1955.

No. 917.

UNITED STATES OF AMERICA,
Petitioner,

versus

SCHNEER'S ATLANTA, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

There was no opinion entered by the District Court of the United States for the Northern District of Georgia. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is reported at 229 F. (2d) 612, and appears in the petition at pages 19-26.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED.

Whether the limitation on jurisdiction of the District Court, as contained in § 408 of the Defense Production Act of 1950, 64 Stat. 808, as amended, 50 U. S. C. A. App., § 2108, continues in effect after the termination of that Act with respect to the suit filed by the Government to recover treble damages for an offense alleged to have been committed before the termination of the Act when such suit was filed before the termination of the Act and was tried after the Act's termination.

STATUTES INVOLVED.

The pertinent provisions of the Defense Production Act of 1950 and of the General Savings Statute, 1 U. S. C., § 109, are set forth in Appendix C at pages 29-32 of the petition.

STATEMENT.

The statement contained in the petition at pages 2-4 is accurate in its recital of the facts and is sufficiently full to present the question with which we are here involved in its proper context. It is, therefore, adopted on behalf of Respondent.

ARGUMENT.

The petitioner invokes the certiorari jurisdiction of this Court upon the contention that the decision of the Court below was (1) contrary to this Court's decision; (2) that it misinterprets and misapplies the principles laid down by this Court; (3) that it is in direct conflict with decisions of other Courts of Appeals, viz.: the Emergency Court of Appeals and the Courts of Appeals for the First, Ninth and Tenth Circuits; (4) that it disrupts uniform interpretation of the Defense Production Act; and (5) that its effect is to deny jurisdiction to the Emergency Court of Appeals since April 30, 1953. In opposition to the grant of the writ, we shall undertake to show that there is no want of harmony between the decision of the Court below and the decisions of this Court relied upon, and that the alleged conflict with the decisions of other Courts of Appeals is more apparent than real. We further expect to show that the exercise of jurisdiction by the Emergency Court since April 30, 1953, has been in every case without direct challenge to its jurisdiction and without its consideration of the jurisdictional point here urged. The decision of the Court below is clearly correct and, finally, it is premature for this Court to accept jurisdiction by the grant of writ of certiorari, because no final judgment has been entered, and there is no compelling reason for making an exception here to the general rule against piecemeal review.

The foregoing summary of Respondent's contentions arranges the various points relied on in the order in which they are responsive to the positions assumed by the Government. For orderly presentation in this brief, we shall argue these points in inverse order.

I.

The Judgment Below Is Not Final and It Is Inappropriate to Review It by Certiorari at This Time.

While we do not question the power to grant certiorari and decide the jurisdictional question at this time under the broad authority contained in 28 U. S. C. 1254 (1), we, nevertheless, contend that it is inappropriate to do so and contrary to the well-established policy followed by this Court. This rule is well stated in **American Construction Company v. Jacksonville T. K. R. Co.**, 148 U. S. 372, 384, as follows:

> "This Court should not issue a writ of certiorari to review a decree of the Circuit Court of Appeals on appeal from an interlocutory order unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause."

The District Court refused to pass upon Respondent's motion for a summary judgment because of its conclusion that it had no jurisdiction to do so. Having that jurisdiction, as the Court of Appeals has ruled that it does have, the District Court may finally dispose of the case by passing upon the motion for summary judgment. This motion for summary judgment clearly raises the only defense urged in the case, as is borne out by the fact that thereafter judgment was entered by consent. The contention that the regulations were invalid as applied to this Respondent can now be decided by the District Court without evidence and its decision will pave the way for the entry of a final judgment. In fact, the case has already been set down for an early hearing in the District Court. There is no element of inconvenience or embarrassment which will be eliminated by the decision of the jurisdictional question at the present time. We shall undertake to show that the very narrow point presented is of limited interest except in this case.

Should the District Court's decision on the merits be against the Respondent's contention, then the decision of the point presented, even in this case, will be moot. In any consideration of embarrassment and inconvenience we submit that the Court should not lose sight of the burden upon Respondent flowing from a grant of the writ in a case as small in amount as that involved and where the question to be decided may be moot.

II.

The Decision Below Is Clearly Correct.

The Defense Production Act of 1950, while in many respects paralleling almost exactly the Emergency Price Control Act, is entirely different in language and in substance from that Act in its provision with respect to the effect of termination. A comparison of these sections is interesting. The pertinent portion of § 1 (b) of the Emergency Price Control Act, 56 Stat. 24, 50 U. S. C. App., § 901 (b), is:

> "The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessarily in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense."

The effect of termination of the Defense Production Act is contained in § 706 (b) thereof, 64 Stat. 818, 50 U. S. C. App., § 2156 (b), which provides in part:

> "* * * The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. * * *"

Thus, it will be seen that by express terms the statute, all regulations, orders, price schedules and requirements were expressly preserved and continued in effect for certain purposes by the Emergency Price Control Act. While this Act terminated for most purposes, the effect of the quoted language of § 1 (b) was to provide a different and later expiration date for the statute and for regulations and orders thereunder as to offenses committed and rights and liabilities for the purpose of suit, action or prosecution with respect thereto. The language of § 706 (b) of the Defense Production Act does not purport to do this, but simply provides that the termination of the Act shall not defeat any suit. Thereby is saved only what is necessary to avoid defeat of any suit. The Government apparently recognized and acquiesced in this distinction in the Court of Appeals, which took note of this acquiescence, stating at page 615 of the opinion:

> "The parties here apparently concede that there was no savings clause contained in the Act itself that would have the effect of continuing in effect the limitation of the District Court's jurisdiction."

The Government here, contrariwise, takes the position that the language of the two sections is to be given the

same meaning. To say, as the Government does (Petition, p. 9), that the different language amounts to two ways of saying the same thing, entirely ignores the many decisions of this Court holding that liability under repealed or expired statutes may be saved in substance without perpetuating the repealed or expired Act, and that the interpretation which has been given to the language of the Emergency Price Control Act in **Woods v. Hills**, 334 U. S. 210, and in **Swift & Co. v. R. F. C.** (C. A. 7), 183 F. (2) 456, holding that procedural as well as substantive provisions are continued in effect for certain limited purposes.

Certain it is that the language of the Defense Production Act can be literally applied without continuing in effect the provisions of that Act for any purpose. The Government suggests no reason why the two statutes must be construed as two ways of saying the same thing, nor do they offer any explanation as to why Congress chose in the Defense Production Act to use a different way of saying the same thing when this Court has taken note of the parallel nature of the two programs and general similarity in the two Acts. **Allen v. Grand Central Aircraft Company**, 347 U. S. 535.

If the limitation on District Court jurisdiction is not perpetuated after the termination of that Act on April 30, 1953, by the terms of § 706 (b), then the Government contends that the limitation is perpetuated by the General Savings Statute, 1 U. S. C. § 109. The portion of the General Savings Statute pertinent is:

> "* * * The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

The quoted portion, as is noted by the decision of the Court of Appeals, was added in 1948, but uses the identical language with respect to temporary statutes as had been for many years used with respect to repealed statutes. The effect of repeal of a statute upon special jurisdictional provisions contained therein has been well established. The decisions of this Court in **Great Northern Railway Company v. U. S.**, 208 U. S. 452; **Hertz v. Woodsman**, 218 U. S. 205; **Hallowell v. Commons**, 239 U. S. 506, and **Bruner v. U. S.**, 343 U. S. 112, are among the decisions holding that special remedies and procedures, including special jurisdictional provisions, are not kept in life after the repeal of legislation unless there is special legislative provision preserving them. The liabilities and substantive rights preserved by the General Savings Statute do not include such remedial, procedural and jurisdictional provision.

DeLa Rama S. S. Company v. U. S., 334 U. S. 386, has no application here and, while recognizing that we may call an exception to the general rule, in nowise impairs the authority of the cases cited. Certainly there are cases like **DeLa Rama** where substantive rights can be preserved only through a preservation of remedies, and when this situation exists the remedies must be saved. The Government has wholly failed to point out how the substantive rights and liabilities with which this case is concerned will be mutilated in any respect by allowing the District Court to pass upon the legality of the price regulations. We submit that **DeLa Rama** should be limited to its facts and to other instances where there is some necessity to preserve remedies in order to protect substantive rights.

III.

There Is No Conflict With Decisions of This Court.

Woods v. Hills, 334 U. S. 210, dealt with the Emergency Price Control Act and applied the special provisions in that statute. What was there decided can throw no light upon the meaning of the different language contained in the Defense Production Act. The decision of the Emergency Court of Appeals in **One Hundred Fifty East Forty-Seventh Street Corporation v. Porter**, 156 F. (2) 541, likewise dealt with the Emergency Price Control Act and, in addition, contained some of the elements of the **DeLa Rama** case. While the Emergency Price Control Act was still in effect, a judgment for rent overcharges was obtained in a state court against One Hundred Fifty East Forty-Seventh Street Corporation. Clearly, at the time of the rendition of that judgment the state court had no power to pass upon the legality of the regulation. The Emergency Court held that the original suit instituted there, after the expiration of the Emergency Price Control Act, was ancillary to the enforcement suit and that it continued to have jurisdiction. Thereby it followed the only course which would serve to preserve the right of the litigant to question the validity of the regulation. We submit that it could have said under those facts that unless the remedy was saved, then the right would be mutilated. Only by allowing the suit was the corporation afforded any forum in which to test the legality of the regulations. Portions of § 1 (b) of the Emergency Price Control Act follow the language of the General Savings Statute, but there is a material difference which we submit makes the language of § 1 (b) broader than the General Savings Statute. The Price Control Act provided that the Act, regulations, orders, etc., should after termination "be treated as still remaining in force for the purpose of sustaining any proper suit, action, or

prosecution **with respect to any such right, liability, or offense.**" The General Savings Statute, however, in its corresponding part provided only that "such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution **for the enforcement of such penalty, forfeiture, or liability.**"

IV.

There Is No Real Conflict of Decisions of the Courts of Appeals.

The Government contends that there is a conflict between the decision of the Court of Appeals for the Fifth Circuit in this case and that of the First Circuit in **Bryne v. U. S.**, 218 F. (2) 327. An examination of that decision clearly shows that what was there said on the subject of jurisdiction was not necessary to a decision in the case and was, therefore, dicta. The grounds of appeal, as set out at page 330 of the opinion, were that the Trial Court had erroneously refused to find that the sales in question were exempt under the regulations, and, second, that the Trial Court had erroneously excluded the defense that the sales were made in reliance upon an official interpretation of the regulations. While the Court ruled both points against appellant, the case was reversed to permit the Court to receive evidence on the issue of whether the violation was wilful or whether it was based on a mistaken view of the meaning of the regulations followed in good faith. As the Court pointed out, the decision of this issue would determine the measure of damages. What was said with regard to the exclusive jurisdiction of the Emergency Court of Appeals was not addressed to any issue then before the Court of Appeals, but was by way of speculation as to the posture of the case in the event the Government chose to offer an amendment to the complaint and the District Court saw fit to allow the amend-

ment. This inconsistency in dicta is not the real conflict generally considered necessary for grant of certiorari. This Court has, on occasions, even dismissed writs of certiorari as improvidently granted upon discovery that the apparent conflict between decisions was not a real one. **Layne & Bowler Corporation v. Western Well Works**, 261 U. S. 387; **Keller v. Adams-Campbell Company**, 264 U. S. 314; **Western Electric Company v. Dumore Company**, 282 U. S. 813; **Sanches v. Borras**, 283 U. S. 798.

The Government also relies upon a conflict between the decision here and **U. S. v. Excel Packing Company**, 210 F. (2) 596 (C. A. 10). In the latter case the decision of the Court of Appeals was rendered on February 15, 1954, which was, of course, after the termination of the Defense Production Act. At page 599 of the opinion the Court said:

> "In any event, it is not, however, necessary to determine the validity of Regulation No. 24 in this proceeding, because we think the District Court was without jurisdiction to entertain that question."

Neither the opinion nor the included statement of facts shows when the District Court entered its judgment, whether before or after the termination of the Act. There is no discussion of the termination of the Act or its effect upon the jurisdiction of the District Court. For all that appears, the District Court could have rendered its judgment before termination of the Act. If conflict exists with that decision, it is certainly not a clear conflict.

At page 10 of the petition, in Footnote 6, the Government has collected and cited seven decisions of the Emergency Court of Appeals with which it contends this decision conflicts. It appears that these are all of the cases decided by the Emergency Court of Appeals since April 30, 1953, and the Government's argument seems to be that certiorari should be granted because of the exercise of

jurisdiction by the Emergency Court of Appeals. Since examination of the Emergency Court of Appeals cases cited shows that in none of them was this question of jurisdiction raised or expressly decided, its exercise of jurisdiction was based upon an acquiescence in its jurisdiction by the litigants and failure of the Court to raise and consider the question on its own motion. This is an entirely different matter from what would be presented if a clear issue had been made on jurisdiction and a decision thereon made contrary to what is here decided by the Court of Appeals for the Fifth Circuit.

The final case cited by the Government on this point, **Lambert's Point Docks, Inc., v. Kendall**, 224 F. (2) 284, does not constitute even a physical precedent for the Government, since there the Emergency Court of Appeals found against its own jurisdiction upon other grounds.

V.

The Decision Below Does Not Run Counter to Any Clearly Expressed Congressional Policy.

In the third division of its argument (Petition, p. 11) the Government contends:

> "Prior to the termination of the Price Control parts of the Defense Production Act, an action for the violation of a price regulation brought by the United States in a District Court could not be defeated by a determination by that court that the regulation was invalid. If now the regulation can be so defeated, it must be by reason of the termination."

We need hardly point out that the fallacy in this argument is that such a "defeat" of the regulation would be caused by its invalidity, not by the termination of the Act.

The next contention is that upon the authority of **Yakus v. United States**, 321 U. S. 414, Congress was under no constitutional obligation to provide post-judgment action to question the validity of the regulations. Since § 408 (a) provides for judicial review by protest and appeal, we can accept this statement. We cannot, however, acquiesce in the conclusion that since Congress was not obliged to provide the post-judgment review expiration of the jurisdiction of the Emergency Court of Appeals would not confer jurisdiction on the District Court. It is not the position of Respondent or the holding of the Court below that jurisdiction of the District Court resulted solely from the expiration of the jurisdiction of the Emergency Court but from a termination of that part of the Act which took away jurisdiction of the District Court over a part of the case. The Government invoked the jurisdiction of the District Court by filing the complaint. In the absence of some statutory limitation, this jurisdiction of the District Court includes the power to decide the whole case and every issue therein. **Siler v. L. & N. R. R. Co.**, 213 U. S. 175; **Hurn v. Ousler**, 289 U. S. 238; **Armstrong v. Nu-Enamel Corp.**, 305 U. S. 315; **Hillsboro v. Cromwell**, 326 U. S. 620. The temporary restriction upon its jurisdiction having expired, the jurisdiction returns to the District Court.

CONCLUSION.

Since the decision of the Court of Appeals for the Fifth Circuit is clearly correct and is not in real conflict with any decision of this Court or of other Courts of Appeals, we contend that the writ should be denied. We further contend that there is no serious question of general interest presented, and that since no final judgment has been rendered, the Respondent should not be put to the burden of defending upon this issue by the grant of a writ of certiorari. If other Courts of Appeals have occasion to pass

directly upon this issue and render decisions clearly in conflict with that of the Fifth Circuit, an application for certiorari will then be timely. Until then, the Government will have lost no substantive right and suffered no inconvenience or embarrassment.

Respectfully submitted,

.....

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 75

UNITED STATES OF AMERICA, PETITIONER

v.

SCHNEER'S ATLANTA, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Georgia, denying respondent's motion for summary judgment, is not reported (R. 25–26). The opinion of the United States Court of Appeals for the Fifth Circuit (R. 29–36) is reported at 229 F. 2d 612.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on February 2, 1956 (R. 36). The petition for a writ of certiorari was filed on May 2, 1956, and was granted on June 11, 1956 (R. 37).

The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the termination of the substantive price control program under the Defense Production Act destroyed the exclusive jurisdiction of the Emergency Court of Appeals to determine the validity of regulations issued under that program, so that such determinations may now be made by any court which has jurisdiction of an enforcement action based upon violations occurring during the control period.

STATUTES INVOLVED

The pertinent provisions of the Defense Production Act of 1950 and of the General Savings Statute, 1 U. S. C. 109, are set forth in Appendix A, *infra*, pp. 41–44.

STATEMENT

The United States brought this action on February 19, 1953, to recover treble the amount of overcharges which the respondent corporation was alleged to have received for watches, during the year preceding the filing of the complaint, under ceiling price regulations issued pursuant to the Defense Production Act of 1950 (64 Stat. 798, *et seq.*, as amended, 50 U. S. C. App. 2061, *et seq.*) (R. 1–6).[1] The action was brought under Section 706 (b) of the Defense Production Act (64 Stat. 817, 50 U. S. C. App. 2156 (b)), and 28 U. S. C. 1345. Respondent con-

[1] The regulation involved was Ceiling Price Regulation 7, and Supplemental Regulation 1 thereto (16 F. R. 1872, 1895), as amended.

tended that the regulation as applied to it was invalid (R. 7), because its inventory at the base-date was atypical (R. 10), and because the regulation as applied ignored respondent's practice of using a different percentage mark-up for nationally-advertised watches and "nondescript" watches (R. 11–13). On this basis, it moved for summary judgment (R. 14), arguing that the termination of the applicable provisions of the Defense Production Act gave the district court jurisdiction to determine the validity of the regulation (R. 25). This motion was denied. The court, following other decisions rendered after termination of the price control program, held that any attack upon the regulations must be made in the Emergency Court of Appeals (R. 25). A judgment in favor of the United States for the agreed amount of $3,032.76 was entered on March 25, 1955, with a reservation "that any right defendant may have to appeal to the Emergency Court of Appeals, Office of Defense Mobilization or United States Court of Appeals as to the validity of the Office of Price Stabilization regulation involved is reserved and protected" (R. 25–26).

Respondent attempted to perfect an appeal to the United States Emergency Court of Appeals, but the complaint was not filed until April 26, 1955, and the court dismissed it as untimely (App. B, *infra*, p. 45).

Respondent then appealed to the United States Court of Appeals for the Fifth Circuit from the judgment of the district court (R. 26). That court, on February 2, 1956, reversed the judgment of the district court. It recognized that, prior to the termi-

nation of the Defense Production Act, the district courts had no jurisdiction to determine the validity of price regulations, such authority being reserved to the Emergency Court of Appeals (R. 30). It held, however, that the exclusive jurisdiction of the Emergency Court had expired upon the termination of the Act; that this deprived neither party of any substantive right; and that such a result was therefore not prevented by any savings provision (R. 33–36). Holding, further, that, upon the expiration of the exclusive jurisdiction of the Emergency Court, district courts were empowered to determine the validity of price regulations, the court of appeals remanded the case for such a determination (R. 31–33, 36).

SUMMARY OF ARGUMENT

In this case, the district court entered a judgment for the United States in its suit to recover treble damages for violations of ceiling-price regulations committed during the period of price control. The district court held that the termination of the price control provisions of the Defense Production Act of 1950 had no effect upon its own jurisdiction, and that accordingly respondent's attack upon the validity of the regulation which it was charged with violating was still cognizable only in the Emergency Court of Appeals. The court of appeals has reversed this ruling and has held that the exclusive jurisdiction of the Emergency Court terminated with the substantive provisions of the Act. It has thus ruled that while the substantive provisions of the Act are kept alive to the extent necessary to support actions based on

violations committed during the life of the program, the unique procedural and jurisdictional provisions deliberately adopted by Congress for the litigation of such actions no longer apply. It concluded that no savings clause or statute prevented this anomolous result.

In our view, the decision below ignores the plain meaning of the savings provision in the Defense Production Act, erroneously interprets the General Savings Statute, and defeats the manifest purpose of the Congress as expressed throughout the history of the control program during World War II and the Korean hostilities.

1. Section 706 (b) of the Defense Production Act requires that the "termination of the authority granted * * * not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date * * *" of the substantive provisions. While the court of appeals has overlooked this section, all other courts of appeals which have passed upon the question (including the Emergency Court) have held that it preserves the exclusive jurisdiction of the Emergency Court to hear challenges to the validity of regulations asserted after the termination of controls. These decisions are clearly correct, for to permit the district court to pass upon the validity of price regulations (as does the decision below) permits the defeat of an enforcement action in a manner not previously possible.

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The court below reached its result despite this Court's decision in *Woods* v. *Hills,* 334 U. S. 210, holding that the exclusive jurisdiction of the Emergency Court of Appeals survived the end of price controls under the Emergency Price Control Act of 1942 (56 Stat. 23, *et seq.,* 50 U. S. C. App. 901, *et seq.*). While the savings clause of that act was phrased somewhat differently from Section 706 (b), the meaning of the latter Section is no different and the legislative history of the Defense Production Act confirms that there was no change of policy. The considerations which led to this Court's holding in *Woods* v. *Hills* thus compel the same result here.

2. The court of appeals deemed the General Savings Statute inapplicable because it viewed its holding that the district court could determine the validity of regulations as one sustaining the liabilities created by the Defense Production Act. But as controlling decisions of this Court emphasize, the General Savings Statute preserves not only the liability created by a regulatory statute, but also those remedies and procedures which are related thereto and likewise comprise a vital part of the statutory scheme. *Allen* v. *Grand Central Aircraft Co.,* 347 U. S. 535; *De La Rama S. S. Co.* v. *United States,* 344 U. S. 386.

3. The decision below frustrates one of the dominant purposes which caused Congress to enact the exclusive jurisdiction provision. While Congress desired to establish a speedy and orderly procedure for the disposition of attacks upon regulations which might otherwise have disrupted the entire program

during the period of active price control, it was also moved to establish the Emergency Court by its desire for uniformity in treatment and interpretation of a vast system of nation-wide controls. This could be accomplished only by restricting the determination of the validity of regulations to a single body equipped by experience to deal with the complex problems presented. These considerations (to which Congress gave repeated expression) did not cease to be applicable with the termination of substantive controls, for a large volume of litigation was then pending or in the offing. The holding of the court below threatens the entire structure of uniform interpretation erected over the years of active controls, dispersing the jurisdiction deliberately reserved to the Emergency Court among the numerous district courts, the eleven courts of appeals, and all state courts of competent jurisdiction.

ARGUMENT

INTRODUCTION

This action was brought by the United States to recover damages for respondent's sales in excess of ceiling prices established by regulation under Title IV—Price and Wage Stabilization, of the Defense Production Act of 1950. Title IV, like the Emergency Price Control Act of 1942 on which its provisions were closely modelled, centered judicial review of the validity of price regulations in a single tribunal, the Emergency Court of Appeals. The validity of a price regulation could be challenged by

an action brought in that court following either the administrative denial of a protest against the regulation (Section 408 (a), 64 Stat. 808, as amended, 50 U. S. C. App. 2108, App. A, *infra*, pp. 41–43), or a judgment in an action brought for a violation of the regulation (Section 408 (d)). The validity of the regulation could be tested in no other manner. For the purpose of permitting the exercise of the jurisdiction thus granted, Section 408 (c) [2] of the Defense Production Act continued the Emergency Court of Appeals, established under the earlier act (56 Stat. 31, as amended, 50 U. S. C. App. 924 [3]), and Section 408 (d) (later renumbered 408 (c)) reenacted, in pertinent part, the following provision of the earlier act:

> * * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any such regulation or order [relating to price controls] * * *. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation * * * or to stay, restrain, enjoin, or set aside, in whole or in part, any provision [of Title IV] authorizing the issuance of such regulations * * * or any provision of any such

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[2] Section 408 (c) was later renumbered Section 408 (b). The subsections of Section 408 were renumbered by the Act of June 30, 1952, Section 113 (b), 66 Stat. 302. Citations in this brief will be to the subsections of Section 408 as renumbered and as they appear in Appendix A to this brief, pp. 41–43.

[3] References to the U. S. Code with regard to sections of the Price Control Act of 1942 are to the 1946 Edition of the Code.

> regulation * * *, or to restrain or enjoin the enforcement of any such provision.

There is accordingly no room for dispute, as the court below noted, "that prior to termination of the Defense Production Act of 1950, the District Courts had no power to inquire into the validity of price regulations" (R. 30). See, *e. g., Fast* v. *DiSalle,* 193 F. 2d 181 (Em. C. A.); *Bryne* v. *United States,* 218 F. 2d 327 (C. A. 1); and, under the Emergency Price Control Act of 1942, *Yakus* v. *United States,* 321 U. S. 414; *Bowles* v. *Willingham,* 321 U. S. 503; *Case* v. *Bowles,* 327 U. S. 92; cf. *Lockerty* v. *Phillips,* 319 U. S. 182.

The cited section terminated, however, together with the rest of the price and wage stabilization provisions of Title IV, on April 30, 1953 (Section 717, 64 Stat. 822, as amended, 50 U. S. C. App. 2166). Respondent does not contend that this termination had the effect of extinguishing any liability which it might have incurred for violations previously committed, and the court of appeals assumed that liability would survive. See *Allen* v. *Grand Central Aircraft Co.,* 347 U. S. 535; cf. *Woods* v. *Hills,* 334 U. S. 210; *Fleming* v. *Mohawk Co.,* 331 U. S. 111, 119; *United States* v. *Wheelbarger,* 331 U. S. 791; *United States* v. *Palletz,* 330 U. S. 812; *United States* v. *Hark,* 320 U. S. 531, 536; *Utah Junk Co.* v. *Porter,* 328 U. S. 39, 44; *Collins* v. *Porter,* 328 U. S. 46, 49. Respondent does contend, however—and the court of appeals so ruled—that "the termination of the Defense Production Act rendered inoperative this provision placing exclusive jurisdic-

tion in the Emergency Court," and that accordingly respondent had "the right to have the District Court, whose jurisdiction the Government invoked to seek a penalty against [respondent], pass on the legality of the regulations on which the Government's claim was based"[4] (R. 31–33).

The court of appeals based its decision on its interpretation of the General Savings Statute. Despite the fact that Government counsel submitted a Memorandum to the Court of Appeals on January 10, 1956 in which the savings clause contained in Section 706 (b) of the Act was called to the court's attention, and the additional fact that respondent argued the inapplicability of this same section in its brief, the court of appeals, apparently overlooking the typed memorandum of January 10, 1956, stated that "the parties here apparently concede that there was no saving clause contained in the Act itself that would have the effect

[4] The court of appeals held not only that the Emergency Court of Appeals had lost its *exclusive* jurisdiction to determine the validity of ceiling-price regulations, but that it had lost *all* jurisdiction to hear suits ancillary to enforcement proceedings. The court stated that the question before it, "in its simplest form, is whether [the General Savings Statute, 1 U. S. C. 109] continued Section 2108 [(c)] and [(d)] in life for the purpose of conferring this particular jurisdiction on the Emergency Court of Appeals and denying it to the District Court" (R. 34). The court then held that the sections cited, containing not only the provisions making the jurisdiction of the Emergency Court exclusive and barring other courts from considering the validity of regulations but also the basic grant of jurisdiction to the Emergency Court over post-judgment actions, did not survive the termination. We note that the respondent has taken a similar position in this Court (see Brief for Respondent in Opposition to Petition for Certiorari, pp. 10–12).

of continuing in effect the limitation on the District Court's jurisdiction * * *" (R. 33). We are, to the contrary, strongly of the view that the savings clause of Section 706 (b) operates to preserve the exclusive jurisdiction of the Emergency Court of Appeals which has here been stricken down. Moreover, we submit that the court below has erroneously interpreted and applied the General Savings Statute.

I

THE EXCLUSIVE JURISDICTION OF THE EMERGENCY COURT OF APPEALS TO DETERMINE THE VALIDITY OF CEILING-PRICE REGULATIONS ISSUED UNDER THE AUTHORITY OF TITLE IV OF THE DEFENSE PRODUCTION ACT OF 1950 IS PRESERVED BY SECTION 706 (B) OF THE ACT, NOTWITHSTANDING THE TERMINATION OF TITLE IV ON APRIL 30, 1953.

A. THE LANGUAGE OF SECTION 706 (B) REQUIRES THAT THE EXCLUSIVE JURISDICTION OF THE EMERGENCY COURT OF APPEALS BE PRESERVED.

Section 408 (c) of the Defense Production Act (quoted above, p. 8), which gave the Emergency Court of Appeals its exclusive jurisdiction over the validity of price regulations and precluded the exercise of such jurisdiction by the district courts, was contained in Title IV—Price and Wage Stabilization, of the Act. A separate title, Title VII—General Provisions, contained provisions applicable to all other titles. Among these general provisions was Section 706 (b), containing the following savings clause (50 U. S. C. App. 2156 (b)):

> * * * The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder,

> shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order.

This language, we submit, is sufficient in and of itself to preserve the exclusive jurisdiction of the Emergency Court of Appeals beyond the termination of the Act and to prevent district courts, in enforcement proceedings such as this, from asserting jurisdiction to determine the validity of price regulations. The present action is one "with respect to [a] * * * liability * * * or offense incurred or committed prior to the termination date of * * *" Title IV which, prior to termination, could not have been "defeated" in the district court by a determination by that court that the regulation was invalid. The court of appeals has nonetheless held, contrary to the plain provisions of Section 706 (b), that the termination permits the suit to be so defeated.[5]

By the same token, the decision of the court of appeals permits the termination of the Act to defeat another action, namely, a suit in the Emergency

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[5] In explaining this provision, the Committee Report, H. Rept. No. 2759, 81st Cong., 2d Sess., at p. 22, shows the broad scope of the intended effect of this provision, stating that Section 706 (b) "provides that the termination of any title or section of the act, or of any rule, regulation, or order issued thereunder shall not *affect* any suit, action, or prosecution which is based upon a right, liability, or offense incurred or committed prior to the termination date of such title, or such rule, regulation, or order." (Emphasis added.)

Court of Appeals for post-judgment determination of the validity of a regulation following a judgment of violation in the district court. For, as has been noted (*supra,* fn. 4, p. 10), the court held not only that the district courts acquired jurisdiction but that the Emergency Court lost it upon the expiration of the Act.[6] Such a post-judgment action is ancillary to the enforcement suit and is therefore, as the Emergency Court of Appeals has held, a "suit with respect to a liability incurred under the act prior to its termina-

[6] It might be argued that the court below was called upon to decide no more than that the district courts acquired jurisdiction of the question of validity and that its holding that the Emergency Court lost not only its exclusive jurisdiction but all jurisdiction of this question ancillary to an enforcement action was unnecessary. In our view, a holding that the Emergency Court of Appeals and the district courts exercised concurrent jurisdiction on questions of validity is also completely erroneous. Putting to one side technical and procedural tangles—for example, a possible option, after an adverse district court judgment on a claim of invalidity, to go to the Emergency Court of Appeals or to a circuit court of appeals, or both—a consideration of the factors which prompted Congress to establish a separate tribunal to determine the validity of price regulations compels the conclusion that the Emergency Court's jurisdiction must be either exclusive or non-existent. As we shall show below, pp. 34–40, the principle of exclusive jurisdiction was of the very essence of the congressional purpose in creating the Emergency Court and without this feature the court is an entity which serves no meaningful function. In this connection, it is noteworthy that the grant of jurisdiction to the Emergency Court to determine the validity of regulations in post-judgment actions, its definition as "exclusive", and the denial of such jurisdiction to any other court are all found in the same section (Section 408 (c) and (d)). It would seem, therefore, that the jurisdiction itself and its exclusive nature are inseparable and must stand or fall together, and that any contrary interpretation would do violence to the intent of Congress.

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tion date, within the meaning of * * * " the identical phrase in the saving clause of the Emergency Price Control Act of 1942 (Section 1 (b), 56 Stat. 24, 50 U. S. C. App. § 901 (b)). *150 East 47th Street Corp.* v. *Porter,* 156 F. 2d 541 (Em. C. A.); see also *Standard Kosher Poultry, Inc.* v. *Clark,* 163 F. 2d 430 (Em. C. A.); *Talbot* v. *Woods,* 164 F. 2d 493 (Em. C. A.); *Schiefla* v. *Clark,* 163 F. 2d 685 (Em. C. A.); *Conklin Pen Co.* v. *Bowles,* 152 F. 2d 764 (Em. C. A.); *Allied Oil Corp.* v. *Turney,* 170 F. 2d 79 (Em. C. A.). Under the terms of Section 706 (b) of the Defense Production Act, the termination of the Act may not operate to defeat such suits, and the exclusive jurisdiction of the Emergency Court to hear them must accordingly be continued.

The view that the jurisdiction of the Emergency Court is preserved has been adopted by all courts which have passed on the question, with the sole exception of the court below.

In a case on all fours with the present action, *Bryne* v. *United States,* 218 F. 2d 327, the Court of Appeals for the First Circuit, in an opinion by Chief Judge Magruder, squarely held that Section 706 (b) prevented the termination of the substantive provisions of Title IV from affecting the exclusive jurisdiction of the Emergency Court. In that case, as here, the Government had filed, prior to April 30, 1953, a treble damages suit based on alleged violations of a ceiling-price regulation. The court of appeals ruled, for reasons not here pertinent, that the grant of summary judgment for the Government was errone-

ous and remanded the case with directions. In instructing the district court as to the proceedings on remand, Judge Magruder stated that the lower court would have to decide the case on the assumption that the price order of which the defendant complained was valid, but that in the event of an adverse judgment the defendant might apply to the district court for leave to file a complaint in the Emergency Court of Appeals in accordance with Section 408 (d) (1) of the Act. The court noted the termination of the Act, but also noted that at the time the complaint was filed the district court had no jurisdiction or power to consider the validity of the questioned order. After quoting the provisions of Section 706 (b), the court stated that "under the saving clause in Section 706 (b), this litigation will have to follow the same course as it would have taken under the terms of the Act prior to its termination on April 30, 1953." 218 F. 2d at 335.[7]

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[7] The difficulties posed by a contrary result are demonstrated by the present case, where respondent filed its answer on March 16, 1953, at which time the district court concededly had no jurisdiction to consider any defense based on the invalidity of the regulation (R. 7). If respondent's view is correct, a right to assert such a defense would have arisen after the litigation was well under way and over a month after the filing of the answer.

We do not wish to be understood, however, as arguing that a different result should obtain as to enforcement actions filed after April 30, 1953. Section 706 (b) provides that the termination of the Act "shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced * * *." Consequently, all actions litigated subsequent to termination should and must follow the same procedures.

The Court of Appeals for the Tenth Circuit ruled identically, though without discussing the termination question, in *United States* v. *Excel Packing Co.*, 210 F. 2d 596, certiorari denied, 348 U. S. 817.[8] And in a case in which the Government filed its treble damages suit in the district court on May 1, 1953, a day after the Act's termination, the Court of Appeals for the Ninth Circuit reversed a district court ruling that the regulation was invalid and held that the Emergency Court of Appeals had exclusive jurisdiction to determine validity. *United States* v. *Dix Box Co.*, 232 F. 2d 155.

The Emergency Court of Appeals has itself held in numerous cases, both expressly and by implication, that the savings clause of Section 706 (b) preserved its jurisdiction. Indeed, if jurisdiction were not preserved, then every judgment entered by the Emergency Court in cases of this kind since April 30, 1953, is not only based on an erroneous premise but is absolutely void.[9] *Vallely* v. *Northern Fire and Marine Ins. Co.*, 254 U. S. 348.

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[8] In the *Excel* case, the district court had dismissed the Government's complaint in a treble damages action, apparently on the ground that the price regulation in question was invalid. Although the opinion of the court of appeals is silent on the date of the district court judgment, it was in fact entered on April 10, 1953. The court of appeals reversed, holding that the district court had no jurisdiction to consider validity, as it obviously did not on the date judgment was entered. The court noted, however, that the Emergency Court of Appeals would have such jurisdiction following the remand, provided the district court's judgment were adverse to the defendant and the defendant deemed it expedient to file a complaint in the Emergency Court. 210 F. 2d at 599–600.

[9] This includes the following cases: *Haldeman Creamery, Inc.* v. *Kendall*, 208 F. 2d 360; *Victory Packing Co.* v. *Kendall*, 208 F. 2d 358; *Northwest Steel Rolling Mills, Inc.* v. *Kendall*, 210 F. 2d 283, certiorari denied, 347 U. S. 960; *George V. Tribe Co.* v. *Ken-*

In *Haldeman Creamery, Inc.* v. *Kendall,* 208 F. 2d 360, decided November 18, 1953, the Emergency Court explicitly considered the question here at issue. Although that was a suit for review of the denial of a protest, the court held, as it had in suits under the Emergency Price Control Act of 1942, that the continuation of its jurisdiction to review protest denials was contingent upon the existence or possibility of an enforcement action based upon a violation of the protested regulation or order, and that, where an enforcement proceeding was in fact pending or possible, its jurisdiction on the review of the denial of a protest was in all respects the same as its jurisdiction to entertain complaints for post-judgment review.[10] An enforcement action was pending in that case. In these circumstances, the court held that Section 706 (b) "preserves the jurisdiction of this court to make an adjudication of the present case * * *". 208 F. 2d 360.[11]

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dall, 210 F. 2d 658; *Lambert's Point Docks, Inc.* v. *Kendall*, 215 F. 2d 455; *Kershaw* v. *Kendall*, 215 F. 2d 653; *Tanner's Hides Inc.* v. *Kendall*, 219 F. 2d 710; *Lambert's Point Docks, Inc.* v. *Kendall*, 224 F. 2d 284.

[10] This ruling was based on the fact that both savings clauses saved only suits "with respect to any right, liability, or offense" previously incurred. The court had earlier concluded that this referred to civil and criminal enforcement proceedings predicated on past violations, and that accordingly only the ancillary jurisdiction of the Emergency Court with respect to such cases survived, and not jurisdiction to review the denial of a protest where no such enforcement proceedings were pending or possible. *Standard Kosher Poultry, Inc.* v. *Clark*, 163 F. 2d 430; *Schiefla* v. *Clark*, 163 F. 2d 685; *Talbot* v. *Woods*, 164 F. 2d 493; *Allied Oil Corp.* v. *Turney*, 170 F. 2d 79.

[11] The Emergency Court was, of course, not presented with the issue whether its jurisdiction continued to be exclusive.

Since the date of that holding, the Emergency Court has proceeded to decide cases without discussing the effect of the Act's termination. See cases cited *supra,* fn. 9, pp. 16–17. As Judge Magruder noted in *Bryne* v. *United States,* 218 F. 2d 327 at 335:

> * * * It is true that the saving clause in the Defense Production Act is expressed in somewhat different phraseology from the saving clause in the Emergency Price Control Act of 1942. Despite this change in phraseology, the Emergency Court of Appeals has assumed, we think correctly, that no difference in effect was intended. *Haldeman Creamery, Inc.* v. *Kendall,* Em. App., 1953, 208 F. 2d 360, 363, 364; *Lambert's Point Docks, Inc.* v. *Kendall,* Em. App., 1954, 215 F. 2d 455.

Thus, the instant case is the first and only one to hold that the jurisdiction of the Emergency Court abated on April 30, 1953. Moreover, the court below reached this unique result without even considering the savings provision (Section 706 (b)) written into the Defense Production Act.

B. IN ADOPTING DIFFERENT PHRASEOLOGY IN SECTION 706 (B) OF THE DEFENSE PRODUCTION ACT OF 1950 FROM THAT USED IN SECTION 1 (B) OF THE EMERGENCY PRICE CONTROL ACT OF 1942, CONGRESS DID NOT INTEND TO ALTER THE RULE THAT THE EXCLUSIVE JURISDICTION OF THE EMERGENCY COURT OF APPEALS SURVIVES THE TERMINATION OF PRICE CONTROLS

The 1942 Act: This Court has stated that "to read the Defense Production Act of 1950 without reference to [the World War II legislation on which it was modelled] is to read it out of the context in which Congress enacted it." *Allen* v. *Grand Central Aircraft Co.,* 347 U. S. 535 at 541. As has already been indicated,

supra, p. 18, the numerous holdings that the exclusive jurisdiction of the Emergency Court of Appeals survived the termination of the Defense Production Act are in accord with the earlier holdings following the termination of the Emergency Price Control Act of 1942.

That the exclusive jurisdiction of the Emergency Court under the earlier act survived the act's termination was decided by this Court in *Woods* v. *Hills*, 334 U. S. 210. In that case, the Price Administrator brought an action to recover treble damages for the violation of a maximum-rent order. The district court held that the Administrator had failed to prove the validity of the order, and entered judgment for the defendant. The Administrator appealed, but between the date of judgment and the appeal the Price Control Act expired. The court of appeals therefore certified the following questions to this Court (334 U. S. at 212–213):

> (1) On remand, will the District Court * * * have jurisdiction to determine the validity of the second rent order * * *?
>
> (2) If the first question is answered in the negative, does the Emergency Court of Appeals still have jurisdiction to determine the validity of the second rent order?
>
> (3) If the second question is answered in the affirmative, and this court remands the cause with directions to enter judgment as prayed for against Hills [the defendant], may Hills, under Sec. 204 (e) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. App., Sec. 924 (e)), apply to the District Court for

> leave to file in the Emergency Court of Appeals a complaint against the Administrator, setting forth objections to the validity of the second rent order, and, upon proper petition and showing, obtain the relief provided for in Sec. 204 (e) * * *?

This Court held that, prior to the termination of the Price Control Act, the Emergency Court had had exclusive jurisdiction to determine the validity of the rent order. "The Emergency Price Control Act", the Court continued (334 U. S. at 214):

> * * * was to terminate on June 30, 1947. Section 1 (b), which fixed that date, expressly provides that "as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense." 56 Stat. 24. Since the offense complained of in the case at bar occurred before the termination date, § 1 (b) would apply and the Emergency Court of Appeals would still have exclusive jurisdiction to pass on the validity of the second rent order, if additional prerequisites set forth in § 204 (e) (1) of the statute were satisfied.

Accordingly, this Court gave a negative answer to the question whether the district courts acquired jurisdiction to determine the validity of regulations on the termination of the Act (question (1)), and an affirmative answer to the question whether the

Emergency Court continued to exercise exclusive jurisdiction over such matters (question (2)). The Court went on to hold, however, that the "additional prerequisites set forth in Section 204 (e) (1) of the statute" had not been satisfied, since the effect of a 1947 amendment of that subsection was to abolish post-judgment review in the Emergency Court with respect to the validity of rent orders (but not other orders), leaving the administrative protest procedure (with review in the Emergency Court in the event of denial) as the only avenue for challenging the validity of the rent order in question. 334 U. S. 214–218. The third certified question was therefore answered in the negative.[12] In his opinion, Chief Justice Vinson took note of the fact that "the terms of a 1947 amendment * * * clearly show congressional recognition that this exclusive jurisdiction continued after the termination date". 334 U. S. at 214, fn. 5.

In holding that the savings clause in Section 1 (b) of the Price Control Act preserved the Emergency Court's exclusive jurisdiction, Chief Justice Vinson noted with approval (*ibid.*) the case of *150 East 47th Street Corp.* v. *Porter,* 156 F. 2d 541 (Em. C. A.), in which the Emergency Court had previously decided that its own jurisdiction was unaffected by the termi-

[12] While the last paragraph of the opinion states that "in answer to question (2), the Emergency Court of Appeals no longer has jurisdiction pursuant to Section 204 (e) to determine the validity of the second rent order", 334 U. S. 218, it is apparent from the balance of the opinion and the questions themselves that the reference is to question (3).

nation of the Price Control Act. In that case, the court stated that its holding (156 F. 2d at 544):

> * * * carries out the evident intent of Congress that offenses against the act prior to June 30, 1946 shall be prosecuted and rights obtained and liabilities incurred thereunder prior to that date shall be determined by suit under the provisions of the act just as if it had not terminated. The act was drawn upon the principle that exclusive jurisdiction to pass upon questions of validity should center in this court and the Supreme Court. There is no suggestion in section 1 (b) that this statutory plan was to be changed with respect to litigation pending after the act's termination date and that the complex relationship between enforcement proceedings in other courts and review proceedings in this court provided by section 204 was then to be abandoned.

The 1950 Act: Respondent has suggested no reason why Congress should have desired to change the result of the foregoing cases when it enacted the Defense Production Act, nor has it pointed to anything which would lead to such a changed result other than the difference (such as it may be) between the language of Section 1 (b) of the Price Control Act and Section 706 (b) of the Defense Production Act. The language of Section 1 (b) reads as follows (50 U. S. C. App. 901 (b)):

> * * * as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and require-

> ments shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

Section 706 (b), on the other hand, is in the following language (50 U. S. C. App. 2156 (b)):

> * * * The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order.

That this difference was neither purposeful nor significant is shown by the legislative history of the Defense Production Act:—

(i) *Section 408.* Congress passed the Defense Production Act of 1950 in order to control the economic pressures resulting from the limited war emergency which accompanied this country's involvement in the Korean hostilities in June 1950. The measure represented a conscious revival, in restricted form and in a single statute, of the system of economic controls which had been established by piecemeal legislation during World War II. See Hearings before Committee on Banking and Currency, United States Senate, on S. 3936, 81st Cong., 2d Sess., pp. 271–292.

In its original form, the bill which was ultimately enacted was of limited scope. Its five titles dealt with priorities and allocations, requisitioning, expan-

sion of productive capacity and supply, and credit controls. See H. R. 9176, 81st Cong., 2d Sess., printed in Hearings before Committee on Banking and Currency, House of Representatives, on H. R. 9176, at pp. 8–16. It contained no provision for the imposition of price controls, and consequently no reference to the Emergency Court of Appeals.

As the debate on H. R. 9176 progressed and the situation in Korea worsened, it became apparent that a more comprehensive control of the economy was required. Accordingly, numerous amendments adding a price control title were introduced in the House (see *e. g.*, 96 Cong. Rec. 11531–11532; 11535–11541; 11592–11597; 11839–11842; 11848–11853; 11859–11861). All were modelled on the Emergency Price Control Act of 1942, and all contained provision for continuing the Emergency Court of Appeals and giving it exclusive jurisdiction to determine the validity of price regulations. One of these amendments was adopted by the House and passed as Title II of the House bill (96 Cong. Rec. 12221, 12223, 12224–12231). This Title provided that the validity of regulations could be tested in only one manner:—by a protest to the Administrator, followed by review in the Emergency Court of Appeals. 96 Cong. Rec. 12220, 12221. There was no provision for testing validity in or ancillary to an enforcement action. Cf. *Yakus* v. *United States,* 321 U. S. 414.

The Senate bill, S. 3936, was similarly introduced without a price control title, but such a title was added by a committee amendment. S. Rept. No. 2250,

81st Cong., 2d Sess., p. 20. The Senate bill, as passed, differed, however, from the House bill. Although both bills gave the Emergency Court of Appeals exclusive jurisdiction to determine the validity of regulations in protest cases, the Senate bill also permitted "courts of general or other competent jurisdiction [to] pass upon the validity of such regulations and orders in cases otherwise properly pending before them" (Section 408 (d) of S. 3936).[13] The Conference substitute retained the protest provisions of both bills, but on the insistence of the House conferees the Senate proposal giving jurisdiction over questions of validity to courts other than the Emergency Court was rejected. A provision permitting recourse to the Emergency Court of Appeals when the validity of a regulation was questioned in cases pending in other courts was added. The bill was thus made to conform to the Emergency Price Control Act of 1942, as amended by the Act of June 30, 1944, 58 Stat. 632 *et seq.* (Conference Report, H. Rept. No. 3042, 81st Cong., 2d Sess., pp. 12–14, 34), and the provision was enacted into law as Section 408 of Title IV of the Act.

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[13] The Committee Report, noting this departure from the Emergency Price Control Act of 1942, commented as follows: "This [provision] will permit a person being tried in a local court on a charge of violation of these regulations to contest in that court the validity of the regulations issued under this title [Title IV, Price and Wage Stabilization]. While your committee recognizes the advantages of a specialized skilled court for the purpose of making these determinations, your committee considers it even more important to give to the public the protection of a full trial on the merits in his own local court." S. Rept. No. 2250, 81st Cong., 2d Sess., p. 40.

(ii) *Section 706.* The savings clause of the Act, contained in Section 706 (b), had no such complicated journey through Congress. Section 706 was enacted in an entirely separate title headed "Title VII—General Provisions." Title VII was originally Title V in the bill as first introduced in both the House and Senate (H. R. 9176, cited *supra,* p. 24), and the savings clause was found in Section 506 of that title (*op. cit. supra.* at p. 15). The clause was enacted without change from its original form, and apparently without debate.

Since the bill as originally drafted contained no price control provisions, there was no occasion for the draftsmen to look to the Emergency Price Control Act of 1942 as a model for the savings clause of the bill. Nor was there occasion at that initial stage to consider the possible effect of the phrasing of the clause upon the post-expiration jurisdiction of the Emergency Court of Appeals, since there was no reference in the bill either to the subject matter over which the Emergency Court had long exercised its exclusive jurisdiction or to the Emergency Court itself. It was only after the addition of the price control title to the bill that Section 706 (b) became potentially pertinent to these matters, and it appears that at this stage no congressional thought was directed to this interrelationship. It is certain, therefore, that the wording of Section 706 (b) was not a conscious deviation from the wording of Section 1 (b) of the Price Control Act. By the same token, the wording of Section 706 (b) did not evidence a de-

liberate intention to terminate or limit the exclusive jurisdiction of the Emergency Court with the termination of the Act, contrary to the intention evidenced in the Emergency Price Control Act of 1942.

Absent a strong showing that Congress proposed a different result (and, as argued above, no showing whatever of a purposeful differentiation can be made), it seems evident that, as a matter of language, Section 706 (b) of the 1950 Act must be given the same practical effect as Section 1 (b) of the 1942 Act. The only difference between the provisions is that Section 1 (b) provided that after termination the provisions of the act "shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution", while Section 706 (b) provides that termination of the authority granted by the statute "shall not operate to defeat any suit, action, or prosecution." In the one case, an action shall be sustained; in the other, it shall not be defeated. This, we submit, amounts to two ways of saying the same thing. If Section 1 (b) sufficed to preserve the exclusive jurisdiction of the Emergency Court, Section 706 (b) should have the same effect.

II

THE EXCLUSIVE JURISDICTION OF THE EMERGENCY COURT OF APPEALS IS ALSO PRESERVED BY THE GENERAL SAVINGS STATUTE, 1 U. S. C. 109

We are here dealing with temporary legislation. When such legislation expires, the General Savings Statute, 1 U. S. C. 109, applies to keep the statute in force for the purpose of sustaining actions based upon

liabilities incurred prior to the date of expiration. The inclusion of a special savings clause in the temporary Act, such as Section 706 (b), does not render the General Savings Statute inapplicable "unless the special character of that clause by plain implication cuts down the scope and operation of the [General Savings Statute]". *Hertz* v. *Woodman*, 218 U. S. 205, 218. This Court, moreover, has recently stated, "we find no express, or even implied, provision in the [Defense Production] Act contrary to the policy of the general savings statute." *Allen* v. *Grand Central Aircraft Co.*, 347 U. S. 535, 554. We therefore submit that, even if the language of the savings clause of the Defense Production Act fell short of preserving the exclusive jurisdiction of the Emergency Court, the General Savings Statute would nevertheless operate to keep in force the provisions of Section 408 (c) and (d) and to preserve the exclusive jurisdiction granted therein.

The General Savings Statute provides in part:

> The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

This language, it will be noted, is identical in pertinent part with that of Section 1 (b) of the Emergency Price Control Act of 1942, since both provide that

the statute "shall be treated as still remaining in force for the purpose of sustaining any proper action" with respect to pre-existing liabilities. Since, as we have seen, this Court held in *Woods* v. *Hills,* 334 U. S. 210, that the words of Section 1 (b) sufficed to keep alive the exclusive jurisdiction of the Emergency Court, it follows that the identical words in the General Savings Statute similarly suffice to preserve that court's exclusive jurisdiction in Defense Production Act cases.

The same result is compelled by this Court's decisions in General Savings Statute cases. In *Allen* v. *Grand Central Aircraft Co., supra,* the respondent contended that the National Enforcement Commission, an administrative body established under the authority of the Defense Production Act, lacked continuing authority to determine the amount of past payments in violation of wage ceilings. This Court held not only that the liability of the respondent survived termination of the substantive provisions of the Act, but that the means provided for enforcing that liability continued as well. "The precise object of the general savings statute," it said, "is to prevent the expiration of a temporary statute from cutting off appropriate measures to enforce the expired statute in relation to violations of it, or of regulations issued under it, occurring before its expiration" (347 U. S. at 554–555).

This holding in the *Grand Central* case, as well as the holding in *Woods* v. *Hills, supra,* clearly refutes the ruling by the court below that with respect to the

Defense Production Act the savings provisions preserved only the claims but did not continue the jurisdiction of a specific tribunal provided by the Act for the enforcement of such claims.

In addition, we submit that the court below misinterpreted this Court's decision in *De La Rama S. S. Co.* v. *United States,* 344 U. S. 386, a case which is also controlling here. In *De La Rama,* the question was whether the repeal of the War Risk Insurance Act had deprived the district courts of the jurisdiction which had been specially conferred on them by that Act. The Court held that the General Savings Statute preserved not merely the substantive liability provisions of the Act but the jurisdictional and procedural provisions as well, stating (344 U. S. at 389):

> By the General Savings Statute Congress did not merely save from extinction a liability incurred under the repealed statute; it saved the statute itself * * *. We see no reason why a careful provision of Congress, keeping a repealed statute alive for a precise purpose, should not be respected when doing so will attain exactly that purpose.

The Court went on to note the important difference between the repeal or termination of statutes solely jurisdictional in scope and of statutes which (like the Defense Production Act)

> * * * create rights and also prescribe how the rights are to be vindicated. In the latter statutes, "substantive" and "procedural" are not disparate categories; they are fused components of the expression of a policy.

> When the very purpose of Congress is to take away jurisdiction, of course it does not survive, even as to pending suits, unless expressly reserved. *Ex parte McCardle,* 7 Wall. 506, is the historic illustration of such a withdrawal of jurisdiction, of which less famous but equally clear examples are *Hallowell* v. *Commons,* 239 U. S. 506, and *Bruner* v. *United States,* 343 U. S. 112. If the aim is to destroy a tribunal or to take away cases from it, there is no basis for finding saving exceptions unless they are made explicit. But where the object of Congress was to destroy rights in the future while saving those which have accrued, to strike down enforcing provisions that have special relation to the accrued right and as such are part and parcel of it, is to mutilate that right and hence to defeat rather than further the legislative purpose. [344 U. S. at 390.] [14]

The above language is as fully applicable to the preservation of the enforcement provisions of the Defense Production Act (including the inseparable

[14] The significance of this broad delineation of the scope of the General Savings Statute has been wholly ignored by the court below. The opinion of the court of appeals attempts to limit the applicability of *De La Rama* by stressing an incidental element reflected in this Court's remark, at 344 U. S. 389 that "indeed, *in this case* the liability under the statute is not wholly saved unless that portion of the statute which gives the District Court jurisdiction also survives" (emphasis added). R. 35. It is clear from the balance of Mr. Justice Frankfurter's opinion that the element of added interest in an admiralty suit was cited not as a *reason* for preserving the jurisdictional provisions of the Act but as a demonstration of the "concrete, dollars-and-cents importance" which such preservation, required by the General Savings Statute, could have in particular cases (344 U. S. at 389).

element of exclusive jurisdiction in the Emergency Court) as it was to the jurisdictional provisions of the War Risk Insurance Act.

The reliance by the court of appeals on the *Bruner* and *Hallowell* cases, cited by this Court in *De La Rama* as examples of cases in which it is "the very purpose of Congress * * * to take away jurisdiction," gives added emphasis to the error of the views expressed below (R. 34, 35).[15] There is not the slight-

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[15] The inapplicability of the General Savings Statute to purely jurisdictional statutes such as those involved in *Bruner* and *Hallowell* is implicit in the language of Section 109 itself. Since no "penalty, forfeiture, or liability" is incurred under a purely jurisdictional statute, and there is accordingly no possibility of any "action or prosecution" based on the statute itself, there is nothing for the General Savings Statute to save.

While respondent, in its brief in opposition, characterized *De La Rama* as an "exception to the general rule" that "special remedies and procedures, including special jurisdictional provisions, are not kept in life after the repeal of legislation * * *" (p. 8), no decision of this Court has ever established such a "general rule", as *De La Rama*, properly read, amply demonstrates. The early case of *Great Northern Ry. Co.* v. *United States*, 208 U. S. 452, cited by respondent, involved a partial repeal of the Elkins Act by the Hepburn Act. Section 10 of the Hepburn Act provided that "the amendments herein * * * shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law." The Court held that this provision dealt only with remedies, not liabilities, and therefore did not prevent the General Savings Statute from preserving liabilities incurred prior to the repeal but not yet the subject of pending actions. The Court was not called upon to determine whether the General Savings Statute would preserve remedies as well as liabilities in a case where Congress had not, as it had in Section 10, expressly dealt with matters of procedure to the exclusion of the General Savings Statute.

It is true that in *Hertz* v. *Woodman*, 218 U. S. 205, the Court interpreted *Great Northern* as holding that the lack of conflict

est indication of any such purpose or aim with reference to the jurisdiction of the Emergency Court. Rather, the termination of the Defense Production Act is analogous to the repeal involved in the *De La Rama* case, of which this Court said: "In repealing the War Risk Insurance Act among numerous other statutes, Congress was concerned not with jurisdiction, not with the undesirability of the district courts and the suitability of the Court of Claims as a forum for suits under that Act. It was concerned with terminating war powers after the 'shooting war' had terminated" (334 U. S. at 391). To read into the provision for the expiration of the Defense Production Act a desire to take away jurisdiction is wholly unwarranted, particularly when Congress has frequently demonstrated that it knows how to bring about a termination or transfer of jurisdiction in express terms when it desires to do so.[16] The General

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between Section 10 of the Elkins Act and the General Savings Statute was due to the fact that the former "applied to remedies and procedure", whereas the latter "saved penalties, forfeitures and liabilities" (218 U. S. at 218). But, as we have shown, this seems too broad a reading of *Great Northern*. In any event, it was pure dictum, rejected by *De La Rama*. The only questions before the Court in *Woodman* were whether the General Savings Statute applied to civil as well as criminal liabilities and whether a liability in fact existed in that case prior to the repeal of the tax statute in question. There was no question of the survival of remedies.

[16] Cf., in addition to *Bruner* and *Hallowell*, *Ex parte McCardle*, 7 Wall. 506; *Railroad Co.* v. *Grant*, 98 U. S. 398; *Sherman* v. *Grinnell*, 123 U. S. 679; *Gurnee* v. *Patrick County*, 137 U. S. 141; *Gwin* v. *United States*, 184 U. S. 669 (changes in Supreme Court appellate jurisdiction); *Insurance Co.* v. *Ritchie*, 5 Wall. 541; *The Assessor* v. *Osbornes*, 9 Wall. 567; *Smallwood* v. *Gallardo*,

Savings Statute, it must be emphasized, embodies a rule of construction, the sole purpose of which is to aid in giving effect to the will of Congress. Cf. *Great Northern Ry. Co.* v. *United States,* 208 U. S. 452, 465. Congress, as already indicated (pp. 23–27) and as we shall further show (*infra,* pp. 35–39), has given no evidence of a desire to depart from the scheme of exclusive jurisdiction which it adopted in the Emergency Price Control Act of 1942, *Woods* v. *Hills, supra,* and continued in the Defense Production Act. The liability provisions and the exclusive jurisdiction provisions of both Acts "are fused components of the expression of a policy", and "to strike down the enforcing provisions that have special relation to the accrued right and as such are part and parcel of it, is to mutilate that right and hence to defeat rather than further the legislative purpose." *De La Rama S. S. Co.* v. *United States,* 344 U. S. 386, 390.

III

THE CONGRESSIONAL PURPOSES IN ESTABLISHING AN EMERGENCY COURT OF APPEALS CLOTHED WITH EXCLUSIVE JURISDICTION TO DETERMINE THE VALIDITY OF PRICE REGULATIONS REQUIRE THAT THE EXCLUSIVE JURISDICTION PROVISION SURVIVE THE TERMINATION OF THE ACT

If the decision below should stand, the purposes of Congress would be patently frustrated. The court below felt that the expiration of the substantive pro-

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275 U. S. 56 (repeals and amendments evidencing changes in jurisdiction of federal courts in tax and revenue cases); *DeGroot* v. *United States,* 5 Wall. 419; *Gordon* v. *United States,* 7 Wall. 188; *In re Hall,* 167 U. S. 38 (acts divesting tribunals of former jurisdiction).

visions of the Act showed "that the great urgency of enforcement that provided the justification for establishing jurisdiction in a special tribunal no longer exists" (R. 36). But this takes into account only one factor which led to the establishment of exclusive jurisdiction; it ignores the equally important desire of Congress for expert and uniform interpretation of the Act—an end to be achieved by restricting the determination of the validity of regulations issued thereunder to a single court composed of judges experienced in the field.

The committee report accompanying the bill which first provided for the Emergency Court states (S. Rep. No. 931, 77th Cong., 2d Sess., p. 7):

> The Emergency Court is established in order to avoid the confusion which would result from conflicting decisions in different circuits on the same regulations. It will also permit the expeditious consideration and disposition of problems arising under the statute by a court familiar with its provisions and operation.[17]

This Court gave broad recognition to these purposes in *Yakus* v. *United States,* 321 U. S. 414, 433, when it declared that the Price Control Act sought to "minimize the confusion that would result from inconsistent decisions of district and circuit courts * * * by restricting judicial review * * * to a single court."

The significance of this consideration, quite apart from considerations of urgency, is attested by the fact

[17] Additional congressional expressions of these purposes are compiled in Appendix C of this brief, pp. 47–56, *infra.*

that district courts were not only precluded from determining the validity of regulations in actions for damages but were also precluded from enjoining any regulation (Section 408 (c)). Had urgency alone been the motivating factor, it would have been amply satisfied by the provision precluding a district court injunction, for that would have sufficed by itself to keep the price control program operating and individual regulations in force until the final termination of litigation in a higher court. Cf. Mr. Justice Rutledge's dissent in *Yakus* v. *United States,* 321 U. S. 414 at 465–468.

The history of the Emergency Court's injunctive powers also serves to demonstrate that the element of urgency was the sole basis for the no-injunction provision but was only one element in the establishment of exclusive jurisdiction. Originally, the Emergency Court was given, in addition to exclusive jurisdiction to determine validity, exclusive authority to enjoin the regulations, but it could exercise injunctive powers only after entering final judgment. The court had no power to enter interlocutory injunctions or temporary restraining orders (Section 408 (a), 64 Stat. 808–809). In 1952, however, after two years of price controls, Congress amended Section 408 (a) to permit the Emergency Court of Appeals—and that court only—to grant temporary relief or restraining orders (Act of June 30, 1952, Section 113 (b), 66 Stat. 302). While thus relaxing the strict requirements of the original Act, apparently in the belief that the pressing need for such restrictions had passed,

Congress at the same time retained the exclusive jurisdiction of the Emergency Court not only with respect to all injunctions but with respect to the determination of the validity of regulations in enforcement actions as well. Indeed, in introducing the amendment which was thus enacted, Representative Wolcott again stressed the continuing purpose of the exclusive jurisdiction provision (98 Cong. Rec. 7734):

> The Emergency Court of Appeals was set up so that there would not be a multiplicity of opinions, perhaps as many as there are circuit courts of appeals * * *.

Moreover, in the same amendatory legislation, passed only ten months before the expiration of Title IV of the Act, Congress also amended Section 407 to expand the exclusive jurisdiction of the Emergency Court to cover determinations of the validity of rent orders issued under the Housing and Rent Act of 1947 (Act of June 30, 1952, Section 113 (a), 66 Stat. 301). In making these amendments at a time when the peak of emergency was past, Congress was clearly motivated by a recognition of the continuing need for uniform and expert treatment. In fact, on the very date on which Title IV expired, April 30, 1953, Congress added a subsection to Section 204 of the Housing and Rent Act (50 U. S. C. App. 1894) in the following language (Act of April 30, 1953, Section 7, 67 Stat. 25):

> (r) Regulations or orders under this title shall be subject to the same proceedings for protest and review *as are provided for regulations or orders relating to price controls by sections 407 and 408* of the Defense Production

> Act of 1950, as amended, and for such purpose such sections are hereby continued notwithstanding the provisions of section 717 of the Defense Production Act of 1950, as amended. [Emphasis added.]

This provision gives implicit recognition to the continued effectiveness of Sections 407 and 408 in governing price control protest and enforcement proceedings litigated after the termination of Title IV.

Congress was of course aware that litigation arising under the Defense Production Act would continue long beyond the Act's termination, as the very existence of the savings clause in Section 706 (b) shows. Experience with the 1942 Price Control Act had convincingly demonstrated that the volume of litigation engendered by such laws is so great that any special statutory provision relating to the conduct of proceedings would fail to accomplish its purposes if it expired with the end of the substantive program.[18] That experience has proved to be a reliable forecast of the trend of litigation arising under the Defense Production Act.[19] It is hardly conceivable that if

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[18] In fiscal 1947 (July 1, 1947–June 30, 1948)—the first year following termination of the Price Control Act on June 30, 1947—15,203 price control and rationing enforcement cases were filed in the district courts. In fiscal 1948, 3,569 such cases were filed. Rep. Dir. Adm. Off., U. S. Courts (1948), Table C2, p. 132.

[19] In fiscal 1953, the first full year after the termination of Title IV, 1,073 cases were filed in the district courts under the Defense Production Act. Forty-three such cases were filed in fiscal 1954 and six in fiscal 1955. Rep., Dir. Adm. Off., U. S. Courts (1954), p. 101; *id.* (1955), Table C2, p. 166.

The Report of the United States Emergency Court of Appeals for the fiscal years 1943 to 1955, inclusive, shows the following

Congress had intended a basic change in jurisdiction and procedures it would have left the accomplishment of that change to the possibility that the courts might adopt a tortured interpretation of the savings clause of Section 706 (b).

In this connection, we would point out the full implications of the ruling below. If accepted, it would operate to confer jurisdiction to pass upon the validity of price regulations not only upon "any Federal court of competent jurisdiction", but upon "any State or Territorial court of competent jurisdiction" as well. For Section 409 (c) of the Act (50 U. S. C. App. 2109 (c)) gives jurisdiction to "any court of competent jurisdiction" to hear civil enforcement actions brought under that section, and subsection (e) of that section defines "court of competent jurisdiction" as including state and territorial, as well as federal, courts. That Congress, which purposefully created the Emergency Court and preserved and augmented its jurisdiction over the years, would have so far departed from its blueprint, and without even undertaking to say that it was doing so, is hardly conceivable.

The foregoing considerations amply demonstrate the inseparable relationship between the exclusive jurisdiction of the Emergency Court of Appeals and the entire scheme for the enforcement of the Act. This relationship retains its significance despite the

---

number of price cases docketed per year: 1943: 40; 1944: 65; 1945: 69; 1946: 77; 1947: 46; 1948: 18; 1949: 5; 1950: none; 1951: 2; 1952: 18; 1953: 35; 1954: 6; 1955: 1. *Id.* (1955), Table G4, p. 250.

end of controls. For the uniformity and expert treatment which Congress sought to guarantee in the determination of questions of validity would be frustrated if, upon the termination of the statute, any court might proceed to decide such questions for itself. The exclusive jurisdiction provision loses the core of its meaning if it is not applied equally to all cases arising under the law, regardless of the date of their inception or determination.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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SEPTEMBER 1956

APPENDIX A

Section 408 of the Defense Production Act (64 Stat. 808, as amended, 66 Stat. 303, 50 U. S. C. App. § 2108), provided as follows in pertinent part:

> (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals specifying his objections and praying that the regulation or order protested be enjoined or set aside in whole or in part. * * * Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of all questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper; to permanently enjoin or set aside, in whole or in part, the regulation or order or the amendment of or supplement to the regulation or order protested; to make and enter upon the pleadings, evidence, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the President; to dismiss the petition; or to remand the proceeding to the President for further action in accordance with the court's decree: * * *
>
> (b) The Emergency Court of Appeals is hereby continued for the purpose of the exercise of the jurisdiction granted by this title, with the powers heretofore granted by law to such court which are not inconsistent with the provisions of this title. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this title. So far as necessary to decision the court shall

decide all relevant questions of law, interpret constitutional and statutory provisions, interpret the meaning or applicability of the terms of any official action under this title or under this Act, as amended of which this title is a part and with respect to this title, or under the Housing and Rent Act of 1947, as amended. The Court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this title.

(c) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code. The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any such regulation or order issued under this title, or under the Housing and Rent Act of 1947, as amended. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title, or the Housing and Rent Act of 1947, as amended, authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

(d) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 409 or 706 of this Act, section 205 or 206 of the Housing and Rent Act of 1947, as amended, or section 371 of title 18, United States Code, involving alleged violation of any provision of any such regulation or order, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the President setting forth objections to the validity of any provision which the defendant is alleged to have violated or conspired to violate. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 407 of this title. Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation or order complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the President or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b) and (c) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.

* * * * *

Section 706 (b) of the Defense Production Act (64 Stat. 817, 50 U. S. C. App. 2156 (b)), provided as follows in pertinent part:

> * * * The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. * * *

The General Savings Statute, 1 U. S. C. 109, is as follows in pertinent part:

> * * * The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

APPENDIX B

[Filed, May 27, 1955]

UNITED STATES EMERGENCY COURT OF APPEALS

No. 672

SCHNEER'S ATLANTA, INC.

v.

CHARLES H. KENDALL, ASSISTANT DIRECTOR, OFFICE OF DEFENSE MOBILIZATION

Present: Maris, *Ch. J.*, and Magruder and McAllister, *JJ.*

JUDGMENT

Upon consideration of the Respondent's motion to dismiss the complaint and of the Complainant's response thereto, and the Court being of the opinion that it is without jurisdiction to entertain the complaint because of its untimely filing,

It is ordered, adjudged and decreed that the complaint be and it hereby is dismissed.

It is further ordered that the clerk of this Court transmit forthwith a certified copy of this judgment to the clerk of the United States District Court for the Northern District of Georgia.

Teste:

By the Court.

(S) J. Frederick Mattingley,
J. FREDERICK MATTINGLEY,
Acting Clerk.

MAY 27, 1955.

APPENDIX C

Indications in the legislative history of the Emergency Price Control Act of 1942 and Defense Production Act of 1950 of the congressional purposes in establishing the Emergency Court of Appeals and in giving it exclusive jurisdiction to review validity of price control regulations and orders:

1. (a) S. Rept. No. 931, 77th Cong., 2d Sess., p. 7 and H. Rept. No. 1409, 77th Cong., 1st Sess., p. 11:

> The committee bill substitutes judicial review of price and rent regulations and other regulations issued under section 2 by a special court called the Emergency Court of Appeals for the judicial review by the circuit courts of appeals provided for in the House bill. This special court is to consist of Federal district and circuit judges designated by the Chief Justice of the United States. The Emergency Court is established in order to avoid the confusion which would result from conflicting decisions in different circuits on the same regulations. It will also permit the expeditious consideration and disposition of problems arising under the statute by a court familiar with its provisions and operation.

(b) S. Rept. No. 931, 77th Cong., 2d Sess., p. 23:

> Section 204 of the bill provides for appeal from the decisions of the Administrator to the courts. In keeping with the emergency character of the regulations and orders of the Administrator issued under section 2 of the bill, and to expedite action affecting the validity of such regulations or orders without overburdening the regular courts and judges, exclusive jurisdic-

tion to determine the validity of any such regulation or order is vested in an Emergency Court of Appeals created under section 204 (c) of the bill, and upon review of judgments or orders of such Emergency Court, in the Supreme Court of the United States. * * *

2. S. Rept. No. 922, 78th Cong., 2d Sess., pp. 55, 57–58:

The procedure established in sections 203 and 204 of the act for the formal administrative reconsideration and judicial review of price and rent regulations has been subject to considerable controversy. The act provides for the filing of a protest with the Price Administrator followed by judicial review in the Emergency Court of Appeals in the event that the protest is denied. The Emergency Court of Appeals is given exclusive jurisdiction, subject to review by the Supreme Court, to pass upon the validity of price and rent regulations or orders issued by the Administrator.

The reasons for the establishment of this procedure were set forth in the report of this committee accompanying the original bill. It was recognized that effective price control would be impossible if the issuance of regulations had to be preceded by elaborate formal hearings in every instance or if their operation and enforcement could be delayed until the final conclusion of litigation instituted for the purpose of challenging their validity. It was also recognized, however, that there should be adequate assurance of an opportunity to bring to the attention of the Administrator considerations which might not have been fully appreciated before the issuance of a regulation or changes in conditions which might have developed thereafter. The report of this committee also emphasized the necessity for a special court, such as the Emergency Court of Ap-

peals, to review price and rent regulations. The report stated:

"The Emergency Court is established in order to avoid the confusion that would result from conflicting decisions in different circuits on the same regulations. It will also permit the expeditious consideration and disposition of problems arising under the statute by a court familiar with its provisions and operation."

* * * * *

Section 204 (d) of the act provides that the Emergency Court of Appeals and the Supreme Court, upon review of the decisions of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 or any price schedule effective under section 206. The constitutional validity of this provision has been sustained by the Supreme Court in the cases of *Yakus* v. *United States* and *Bowles* v. *Willingham*. The considerations underlying the establishment of the Emergency Court of Appeals with exclusive jurisdiction to determine the validity of price and rent regulations were summarized by Chief Justice Stone in the *Yakus case* in the following language:

"In considering these asserted hardships, it is appropriate to take into account the purposes of the Act and the circumstances attending its enactment and application as a war-time emergency measure. The Act was adopted January 30, 1942, shortly after our declaration of war against Germany and Japan, when it was common knowledge, as is emphasized by the legislative history of the Act, that there was grave danger of war-time inflation and the disorganization of our economy from excessive price rises. Congress was under pressing necessity of meeting this danger by a practicable and expeditious means which would operate

with such promptness, regularity and consistency as would minimize the sudden development of commodity price disparities, accentuated by commodity shortages occasioned by the war.

"Inflation is accelerated and its consequences aggravated by price disparities not based on geographic or other relevant differentials. The harm resulting from delayed or unequal price control is beyond repair. And one of the problems involved in the prevention of inflation by establishment of a nation-wide system of price control is the disorganization which would result if enforcement of price orders were delayed or sporadic or were unequal or conflicting in different parts of the country. These evils might well arise if regulations with respect to which there was full opportunity for administrative revision were to be made ineffective by injunction or stay of their enforcement in advance of such revision or of final determination of their validity.

"Congress, in enacting the Emergency Price Control Act, was familiar with the consistent history of delay in utility rate cases. It had in mind the dangers to price control as a preventive of inflation if the validity and effectiveness of prescribed maximum prices were to be subject to the exigencies and delays of litigation originating in eighty-five district courts and continued by separate appeals through eleven separate courts of appeals to this Court, to say nothing of litigation conducted in state courts. See Sen. Rep. No. 931, 77th Cong., 2d sess., pp. 23–5."

The committee heard various proposals for amendment of the exclusive jurisdiction provisions of the act so as to permit the validity of regulations to be passed upon by the various district courts throughout the country. We believe that in many cases these proposals were advanced by those under the misapprehension

that it was necessary for a complainant to come to Washington in order to obtain a hearing before the Emergency Court of Appeals. The fact that the Emergency Court of Appeals has made itself available for hearings at places convenient to the complainants throughout the country removes any basis for criticisms of this character. It also seems clear that the necessity for consistency and continuity in price control remains as compelling today as when the statute was first enacted and makes it imperative that the provisions for exclusive jurisdiction of the Emergency Court of Appeals should be continued in effect.

3. H. Rept. No. 1593, 78th Cong., 2d Sess., pp. 6–7:

Under the act at the present time, the defendant in an enforcement proceeding brought under section 205, whether criminal or civil, may not in that proceeding challenge any regulation or order issued under section 2, or any price schedule, on the ground of its invalidity. * * *

* * * * *

Paragraph (1) of the new subsection (e) provides that at any time prior or within 5 days after judgment in any proceeding brought pursuant to section 205 * * * the defendant may apply to the court for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of the provision which the defendant is alleged to have violated. * * *

* * * * *

It is believed that the provisions of this new subsection (e) will afford defendants in enforcement proceedings fair and adequate opportunity to contest the validity of such regulations, orders, and price schedules; and, through providing for the channeling of such cases involving alleged invalidity to the Emergency Court of Appeals for determination, will

avoid the undesirable consequences which would flow from conflicting decisions were the question of invalidity to be determined by the Federal district courts and State courts.

4. Cong. Rec., Vol. 90:

(a). P. 5301:

Mr. DANAHER. * * * We reviewed the effect of the Supreme Court's decision in the Yakus case, and other decisions on the whole administrative procedure and basis of operation in the Office of Price Administration.

As a result we were in accord that there should be established a more competent mechanism through which those with legitimate protests might obtain a hearing in the Office of Price Administration. To that end there was devised a board, to be set up in the Office of Price Administration itself, which board, however, would be at all time under the Administrator himself.

From the decision ultimately to be rendered an appeal may be taken by any aggrieved person, but he will have a record to take with him, and he will go to the Emergency Court of Appeals. We wished to center the appellate procedure in the Emergency Court of Appeals, to the end that there might be unanimity of action, and not 92 district courts entering 92 different orders on exactly the same regulation or order when complained of.

(b). P. 5305:

Mr. DANAHER. * * * [W]e wish to have uniformity of decision under regulations and orders of the Office of Price Administration, and so we center all appellate review in the Emergency Court of Appeals, and ultimately, of course, the United States Supreme Court.

Therefore, Mr. President, to the end that there may not be in every one of the 80 or 90 United States districts in which criminal proceedings could be brought for violations an equal number of divergent opinions as to the validity

of a regulation or order, we say—to answer now specifically the question of the Senator from Nebraska—if an individual is charged criminally with a violation of an emergency price-control regulation or order he may proceed to trial, he may be convicted, but he shall nonetheless be able to get a stay of execution, to the end that there may be a decision by the very same Emergency Court of Appeals which rules on all other phases of the validity of the regulations and orders of the Office of Price Administration. Consequently, Mr. President, it is eminently desirable that we not have a Maryland court decide one way, a Nebraska court decide another way, and a Connecticut court decide a third way, all on the same order. That is the reason why we wish to permit the appellant in a criminal case to go to the Emergency Court of Appeals to challenge then the validity or the constitutionality of the regulation or order, with the violation of which he is charged.

(c) P. 5371:

Mr. MURDOCK. * * * Why did we establish an exclusive jurisdiction in the Emergency Court of Appeals? It was done so that we would have a uniform line of decisions, and so that we would not have decisions as numerous and varied as there are district courts throughout the United States. Uniformity in price control is one of the very fundamentals which will uphold the proceeding. * * *

(d) P. 5372:

Mr. WHERRY. * * * Certainly the Senator believes in fair play. It is not a question of whether I believe in stabilizing prices; I go along with the Senator in that argument, and I believe in it; but I want to say that the adoption of the amendment will make the act a better one; it will make it more enforceable; it will eliminate all questions about price violations, because people will know that they will

have the defense in question and will be able to make the defense in the Emergency Court of Appeals, instead of in the Office of Price Administration or in one of the appeal boards or even in the district court. They will be able to make it in a court which is impartial in its judgment. Why should anyone who is a nonwillful violator not have such an opportunity?

I may say to the Senator I can name case after case, suggested in the committee meetings, that would support an amendment of this kind. It may be that the Price Administration is going to assess triple damages against a man who does not have the right to defend himself in an impartial court.

(e) P. 6428:

Mr. SPENCE. * * * Of course it is necessary in the enforcement of this act to have uniformity of decisions. It would be practically impossible to enforce this act if we had a multiplicity of decisions in all the various district courts, of which there are 85 in the United States, and 11 appellate courts. It is necessary to have one court to which these matters can be referred in order to have uniformity of decisions on the regulations and orders.

* * * * *

There is a special reason to have an Emergency Court of Appeals, in addition to the necessity for uniformity in decisions, because the judges must acquire technical knowledge, and the constant submission to them of the legality of orders and regulations will give them the knowledge and experience that is necessary for the efficient discharge of their duties.

5. Cong. Rec., Vol. 91:

(a) P. 7079:

Mr. SPENCE. * * * In regard to the Dirksen amendment, [giving district courts jurisdiction to determine the validity of price regulations], I want to say we considered it in committee

and refused to report it. The House twice voted in the amendment and twice the conferees have taken it out of the bill. * * * The Congress established the district courts and Congress established the Emergency Court of Appeals. The Emergency Court of Appeals was organized for the orderly enforcement of the regulations and orders issued pursuant to the Price Control and Stabilization Acts and to give relief to those who filed complaints in regard to the rules and regulations. It was established under the same section of the Constitution as the District courts.

Now what does the Dirksen amendment do? I am sure we all believe that if price regulations are to be enforced they ought to be enforced uniformly as to all citizens, and that they ought to be enforced in one judicial district just as they are enforced in every other district. There are 85 district courts in the United States. There are 10 circuit courts of appeals, and if we include the Circuit Court of Appeals of the District of Columbia there are 11. There is no uniformity of decision in the different appellate districts. One Circuit Court of Appeals may decide a case one way and another appellate circuit court may decide it in an entirely different manner. * * *

(b). P. 7080:

Mr. VORYS of Ohio. The selective service law has gone on the basis that each board is a supreme court in itself, but as to any review, it goes through the regular Federal courts. Would the gentleman say we have had confusion and a break-down in the selective-service law because of that procedure?

Mr. SPENCE. Oh, that is an entirely different matter. Here is a regulation that is general in its scope. That is an individual matter. That applies to an individual. In this case there would not be any uniformity of enforcement under any other system than the one adopted.

6. During the life of the Emergency Price Control Act of 1942 numerous bills were introduced in Congress to abolish the Emergency Court of Appeals or to deprive it of its exclusive jurisdiction to determine the validity of price control regulations and orders. Some of these amendments passed the House but were eliminated at the insistence of the Senate in conference. None was ever enacted into law. The history of some of these bills may be found in the following documents:

(a) 87 Cong. Rec. 9241.

(b) 88 Cong. Rec. 659–660, 663–664, 688–689, 725.

(c) 90 Cong. Rec. 5918–5921.

(d) 91 Cong. Rec. 7079.

(e) H. Rept. No. 1698, 78th Cong., 2d Sess., p. 22.

(f) Conference Report, H. Rept. No. 827, 79th Cong., 1st Sess., p. 7.

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No. 75.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

UNITED STATES OF AMERICA,
Petitioner,

v.

SCHNEER'S ATLANTA, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR THE RESPONDENT.

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No. 75.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

UNITED STATES OF AMERICA,
Petitioner,

v.

SCHNEER'S ATLANTA, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR THE RESPONDENT.

STATEMENT OF THE CASE.

The United States sued respondent in the United States District Court for the Northern District of Georgia to recover threefold damages for alleged sales of watches at prices in excess of maximum prices established by Ceiling Price Regulation 7 and Supplemental Regulation 1 thereto (16 FR 1872, 1895) issued pursuant to the Defense Production Act of 1950 (64 Stat. 798 et seq., as amended 50

U. S. C. App. 2061 et seq.). The complaint (R. 1-6) was filed on February 19, 1953. Answer (R. 7-13) attacked the regulations in question as invalid as applied to this respondent. On February 25, 1954, defendant-respondent filed a motion for summary judgment and supporting affidavit (R. 14-23). The District Court on September 14, 1954, denied the motion for summary judgment for the reason "that (D)efendant's attack upon the regulations . . . must be urged before (the Emergency Court of Appeals)" (R. 25). Subsequently, on March 25, 1955, the court entered judgment in an agreed amount but expressly reserved the right of defendant-respondent "(T)o appeal to the Emergency Court of Appeals, Office of Defense Mobilization or United States Court of Appeals as to the validity of the Office of Price Stabilization regulation involved" (R. 25-26).

On February 2, 1956, the Court of Appeals for the Fifth Circuit reversed, its opinion being reported at 229 F. (2d) 612 (R. 29-36). Certiorari was granted June 11, 1956 (R. 37).

QUESTION PRESENTED.

The single question presented is whether the District Court had jurisdiction and power on September 14, 1954, to consider and pass upon the validity of Ceiling Price Regulation 7 issued pursuant to the Defense Production Act of 1950, after the expiration of that temporary act on April 30, 1953. Pertinent portions of the Defense Production Act of 1950 and of the General Savings Statute, 1 U. S. C. 109, are set forth in Appendix A, infra, pages 15-18.

SUMMARY OF ARGUMENT.

Respondent concedes that during the effective life of the Defense Production Act of 1950, the District Court of the United States had no jurisdiction or power to consider the validity of any regulation or order issued by the Office of Defense Stabilization. After the expiration of the Defense Production Act, by its terms, respondent contends that that portion of the District Court's jurisdiction and power to decide the whole case and all issues therein, which was for a time withdrawn by the terms of the Defense Production Act, was automatically restored. To that extent only respondent agrees with the Government's statement that this case presents the question whether (Brief, p. 4) the exclusive jurisdiction of the Emergency Court of Appeals was terminated by the expiration of the act. It is not necessary to decide whether the Emergency Court continued to have power and jurisdiction, exclusive or concurrent, in other situations as, for example, cases in which judgment was rendered prior to the termination date with leave granted to seek review in the manner provided by § 408 (d) of the Defense Production Act [64 Stat. 808, as amended 66 Stat. 303, 50 U. S. C. App. 2108 (d)].

Respondent recognizes that liability for any offense occurred or committed prior to the termination date of the act survived this termination and that action or prosecution with respect thereto could be instituted after the termination on April 30, 1953, or, where instituted prior to that date, could thereafter be maintained. Respondent contends that these substantive rights were saved both by § 706 (b) of the Defense Production Act [64 Stat. 817, 50 U. S. C. App. 2156 (b)] and by the General Savings Statute, 1 U. S. C. 109, but respondent contends that neither savings clause saves the restriction on the power and jurisdiction of the District Court embodied in § 408 (c) of the

Defense Production Act. There is a substantial difference between the language of the savings clause of the Defense Production Act, § 706 (b), and the savings clause of the Emergency Price Control Act of 1942 [56 Stat. 24, 50 U. S. C. App. 901 (e)], after which act the Defense Production Act was largely modeled. This difference in language renders inapplicable the decision of this Court in **Woods v. Hills**, 334 U. S. 210, and like cases, holding that the limitation on District Court power and jurisdiction survived the termination of the Emergency Price Control Act.

The General Savings Statute, 1 U. S. C. 109, has been uniformally construed as preserving only substantive rights and liabilities and as not keeping alive special procedures, including provisions with respect to jurisdiction. Neither the Defense Production Act nor its legislative history reveals a congressional purpose to preserve, after the termination of that act, the limitation on District Court jurisdiction.

ARGUMENT.

I.

THE TEMPORARY LIMITATION UPON JURISDICTION AND POWER OF THE DISTRICT COURT IMPOSED BY § 408 (C) OF THE DEFENSE PRODUCTION ACT EXPIRED WITH THE OTHER PORTIONS OF TITLE IV OF THAT ACT ON APRIL 30, 1953.

A. The Language of § 706 (B) Does Not Save and Continue in Effect the Temporary Limitation on District Court Jurisdiction.

We deem it unnecessary in this brief to describe in detail the special pattern of judicial review provided by the Defense Production Act. It is sufficient to note that challenges to the validity of regulations and orders of the Price Agency were channeled exclusively to the Emergency Court of Appeals and on review to this Court, either through protest to the Administrator and appeal or by post judgment action after leave granted by the court in which enforcement action had been initiated. Minor differences between the procedure provided in this act and that in existence during the life of the Emergency Price Control Act are not material. In accomplishing this grant of exclusive jurisdiction to the Emergency Court of Appeals and the Supreme Court of the United States, it was provided in § 408 (e) that:

> "Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title or the Housing and Rent Act of 1947, as amended, authoriz-

ing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision."

The price and wage stabilization provisions of the Defense Production Act are contained in Title IV of that act. A separate title, Title VII—General Provisions, was applicable to all titles of the act and contained a special savings clause in § 706 (b) [50 U. S. C. App. 2156 (b)]:

"The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation or order."

By way of comparison, § 1 (b) of the Emergency Price Control Act of 1942, as amended [56 Stat. 24, 50 U. S. C. App. 901 (b)], in its pertinent part provided:

". . . As to offenses committed or rights or liabilities incurred prior to such termination date, the provisions of this Act and such regulations, orders, price schedules and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any such right, liability or offense."

It is at once apparent that § 706 (b) of the Defense Production Act omitted the language continuing the act in existence. This difference in language distinguishes the case at bar from the decisions rendered with regard to § 1 (b) of the Emergency Price Control Act in **Woods v. Hills**, 334 U. S. 210; **150 East 47th Street Corp. v. Porter**, 156 F. (2d) 541 (Em. C. A.); **Standard Kosher Poultry**,

Inc., v. Clark, 163 F. (2d) 430 (Em. C. A.); **Talbot v. Woods**, 164 F. (2d) 493 (Em. C. A.); **Schiefla v. Clark**, 163 F. (2d) 685 (Em. C. A.); **Conklin Pen Co. v. Bowles**, 152 F. (2d) 764 (Em. C. A.); **Allied Oil Corp. v. Turney**, 170 F. (2d) 79 (Em. C. A.).

In **150 East 47th Street Corp. v. Porter** (Em. C. A.), 156 F. (2d) 541, judgment in the civil enforcement action had been rendered by a State court during the effective life of the Emergency Price Control Act and the question posed was whether or not the Emergency Court of Appeals lost its jurisdiction, by way of post judgment review, of the validity of the regulations by the termination of that act. The Emergency Court of Appeals recognized that, at the time of the trial, the trial court had no jurisdiction or power to pass upon the validity of regulations and, had the jurisdiction of the Emergency Court of Appeals not survived, the defendant would have been denied any right to challenge the regulations. We submit that there the enforcing provisions had a special relation to the accrued rights, and they imperatively needed to be preserved and continued in order not to mutilate those rights. **De La Rama Steamship Co. v. United States**, 344 U. S. 386, 390. Under like circumstances, the procedural provisions of the Defense Production Act might have been saved but this question is not here presented and need not be decided. The language of this Court in **Woods v. Hills**, 334 U. S. 210, at page 214, shows that the wording of § 1 (b) preserving and continuing in life the entire act for certain purposes was at least one very important consideration leading to the results there reached.

It is argued that all courts, other than the Court of Appeals for the Fifth Circuit, which have passed upon the question of a continued existence of the Emergency Court and a continued limitation on the District Court jurisdiction, have followed those decisions dealing with the expira-

tion of the Emergency Price Control Act. We submit that an analysis of the cases cited shows that there has been no carefully considered decision on a contested issue upon the question presented by the case at bar. **Bryne v. United States** (C. A. 1), 218 F. (2d) 327, is obiter dicta on this point. After having decided the appeal before it, the court expressed its views with regard to the appropriate procedural course in the event an amendment was offered by the Government.

United States v. Excel Packing Co. (C. A. 10), 210 F. (2d) 597, certiorari denied 348 U. S. 817, does not even discuss the problem created by the termination of the act but the opinion rendered on February 15, 1954 was written as though the act was still in full force. The date of judgment rendered in the trial court is not given in the opinion but, according to the Government's brief, page 16, note 8, was rendered on April 10, 1953, while the act was still in life. Thus, the District Court judgment was clearly erroneous when rendered.

We wish to point out that in **Haldeman Creamery, Inc., v. Kendall** (Em. C. A.), 208 F. (2d) 360, there was no contest on the jurisdiction of the Emergency Court and what was there said was without the benefit of controversy between the parties.

United States v. Dix Box Co. (C. A. 9), 232 F. (2d) 155, like the decision in **Excel Packing Co.**, supra, does not indicate whether or not the act had expired at the time of the trial in the District Court.

The cases decided by the Emergency Court of Appeals since April 30, 1953, collected in the Government's brief, at page 16, footnote 9, are only physical precedents and do not undertake to discuss the effect of the different language.

It is contended by the Government that the language of § 1 (b) of the Emergency Price Control Act of 1942 and

§ 706 (b) of the Defense Production Act of 1950 are but two ways of saying the same thing. The reasoning advanced to support this conclusion is that the language of the former "shall be treated as still remaining in force" has the same meaning as the language "shall not operate to defeat any suit, action or prosecution" contained in the latter. Thus, the argument seems to be that if the termination of the Defense Production Act restored the District Court's jurisdiction and the District Court in any case subsequently held a regulation invalid, that action would be defeated. It is hardly necessary to point out that, in such a case, the defeat of the action would be not the result of termination but the result of the invalidity of the regulation. The construction of the statute for which respondent here contends would not cause the termination of the act to defeat any action. Every such action could proceed in what the Court of Appeals for the Fifth Circuit described as the more normal and ordinary course.

B. The General Savings Statute, 1 U. S. C. 109, Does Not Preserve the Temporary Limitation on the District Court Jurisdiction.

Although the inclusion of a special savings clause does not necessarily render the General Savings Statute inapplicable, **Hertz v. Woodman**, 218 U. S. 205, 218, this Court has already held that there is no express or implied provision in the Defense Production Act contrary to the policy of the General Savings Statute. **Allen v. Grand Central Aircraft Co.**, 347 U. S. 535, 554. It would, therefore, seem apparent that the interpretation of the General Savings Statute would be decisive of this issue.

As the Court of Appeals has pointed out in this case, 229 F. (2d) 612, at page 615, only the second sentence of the General Savings Statute is new and by identical language makes applicable to a "temporary statute" the rule which had been in existence since 1871 with respect to re-

pealed statutes. We submit that this Court has consistently held that the General Savings Statute preserves only substantive rights and liabilities which accrued before the repeal or expiration and does not preserve expired or repealed remedies or procedural rules including jurisdictional provisions. **Great Northern Ry. Co. v. United States,** 208 U. S. 452; **Hertz v. Woodman,** 218 U. S. 205; **Hallowell v. Commons,** 239 U. S. 506; **Bruner v. United States,** 343 U. S. 112; **United States v. Obermeier** (C. A. 2), 186 F. (2d) 243, certiorari denied March 26, 1951.

The crux of this case, it seems to us, is the Government's contention in effect that **De La Rama SS. Co. v. United States**, 344 U. S. 386, requires a different result. In the **De La Rama** case the procedural provisions had a direct effect upon the substantive rights of the litigants. The Government would emphasize that portion of the **De La Rama** case stating of statutes which create rights and also prescribe how those rights are to be vindicated that ". . . 'Substantive' and 'procedural' are not disparate categories; they are fused components of the expression of a policy." We take this to mean that the Government would have the General Savings Statute construed as saving from repeal or expiration all procedural provisions including jurisdictional provisions in every situation where procedural and jurisdictional provisions are contained in the same act which creates rights and liabilities. Such a reading would amount to a reversal sub silentio of prior contrary decisions, including **Hallowell v. Commons,** 239 U. S. 506, and **Bruner v. United States,** 343 U. S. 112. We submit that such a reading of the De La Rama decision is not justified.

The respondent would emphasize from that decision the language at page 390.

> "But where the object of Congress was to destroy rights in the future while saving those which have

> accrued, to strike down enforcing provisions that have special relation to the accrued rights and as such are part and parcel of it, is to mutilate that right and hence to defeat rather than further the legislative purpose."

Thus, it is only where the enforcing provisions have special relation to the accrued right that the enforcing provisions are preserved. It, therefore, becomes pertinent to inquire whether, on the facts in the case at bar, the enforcing provisions continue to have special relation to the accrued rights of the Government.

II.

THERE IS NO SUCH SPECIAL RELATION BETWEEN THE GOVERNMENT'S ACCRUED RIGHTS AND THE JURISDICTIONAL LIMITATION AS TO REQUIRE A SAVING OF THE LIMITATION ON JURISDICTION NOR WAS THERE A CONGRESSIONAL PURPOSE SO TO SAVE THESE PROVISIONS.

The Government contends (Brief, p. 34) that if the decision below is allowed to stand, the congressional purpose would be patently frustrated. In its analysis of the legislative history of the Defense Production Act (Brief, pp. 23-27, App. C, pp. 48-56), it is shown that Congress did not debate or consider the consequences of termination upon the special jurisdictional provisions. It is apparently agreed that the great urgency of enforcement which called for the establishment of the special tribunal no longer exists but it is submitted that the court overlooked the necessity for uniformity of interpretation. During the period when price controls were being applied, a special need for uniformity of interpretation existed. A holding of invalidity in one circuit and the consequent removal of

price regulation on scarce commodities would have caused those scarce commodities to be drawn into the jurisdictional area where the vacuum was thus created. Purchasers of these commodities at uncontrolled high prices would then have pressed for higher ceilings applicable to their sales and irreparable damage would have been done before the inconsistency could have been resolved. The Chief Justice took note of these circumstances in **Yakus v. United States**, 321 U. S. 414, 432, in the following language:

> "Inflation is accelerated and its consequences aggravated by price disparities not based on geographic or other relevant differentials. The harm resulting from delayed or unequal price control is beyond repair. And one of the problems involved in the prevention of inflation by establishment of a nation-wide system of price control is the disorganization which would result if enforcement of price orders were delayed or sporadic or were unequal or conflicting in different parts of the country. These evils might well arise if regulations with respect to which there was full opportunity for administrative revision were to be made ineffective by injunction or stay of their enforcement in advance of such revision or of final determination of their validity."

With the termination of active price control, the special need for this uniformity disappeared and no reason is shown why a review in this Court is not as adequate to insure uniformity as in other cases.

At pages 38 and 39 of the Government's brief, footnotes 18 and 19, certain statistics are offered with respect to the volume of litigation instituted since the termination of the controls. We wish to point out that these notes contain what appears to be an error. Note 18 provides:

> "In fiscal 1947 (July 1, 1947-June 30, 1948)—the first year following termination of the Price Control

> Act on June 30, 1947—15,203 price control and rationing enforcement cases were filed in the district courts. In fiscal 1948, 3,569 such cases were filed. Rep. Dir. Adm. Off., U. S. Courts (1948), Table C2, p. 132."

We submit that it is customary in speaking of a fiscal year to use the year in which the fiscal year terminated rather than the one in which it began. Thus, the period July 1, 1947-June 30, 1948, would be fiscal year 1948. An examination of the reports of the Director of Administrative Office, United States Courts, for the years in question, clearly indicates that the identification of fiscal years in those reports was in this sense. Thus, the 15,203 cases filed in fiscal 1947 were not filed in the first full year following termination of the Price Control Act but in the last full year of its life. In like manner, the 1,073 cases filed in fiscal 1953 were filed in the last year of the existence of the Defense Production Act and only 43 such cases were filed after its expiration. The same observation appears to be true with regard to the Emergency Court of Appeals and there have been only 8 cases docketed in that court subsequent to April 30, 1953. The temporary report of the Director of Administrative Office for the year ending June 30, 1956, dated September 24, 1956, which is available to us only in mimeograph form, contains the following statement with respect to the Emergency Court of Appeals:

> "As was stated in the last annual report, the United States Emergency Court of Appeals which was constituted as a judicial tribunal for the review during the Second World War of administrative decisions concerning price, rent, and other business regulations related to the war effort, has now virtually finished its work. At the end of 1955 it had left only one pending case. Nevertheless, one case was docketed during the year and only one case disposed of so that at the end of 1956 there was still one case pending."

Thus, the enforcing provisions, including special jurisdictional provisions of the Defense Production Act, do not at present have a special relation to the accrued rights, are not a part or parcel of it, and are not saved by the General Savings Statute.

CONCLUSION.

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX A.

Section 408 of the Defense Production Act (64 Stat. 808, as amended, 66 Stat. 303, 50 U. S. C. App. § 2108), provided as follows in pertinent part:

> (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals specifying his objections and praying that the regulation or order protested be enjoined or set aside in whole or in part. * * * Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of all questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper; to permanently enjoin or set aside, in whole or in part, the regulation or order or the amendment of or supplement to the regulation or order protested; to make and enter upon the pleadings, evidence, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the President; to dismiss the petition; or to remand the proceeding to the President for further action in accordance with the court's decree; * * *
>
> (b) The Emergency Court of Appeals is hereby continued for the purpose of the exercise of the jurisdiction granted by this title, with the powers heretofore granted by law to such court which are not inconsistent with the provisions of this title. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this title. So far as necessary to decision the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, interpret the meaning or ap-

plicability of the terms of any official action under this title or under this Act, as amended of which this title is a part and with respect to this title, or under the Housing and Rent Act of 1947, as amended. The Court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this title.

(c) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code. The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any such regulation or order issued under this title, or under the Housing and Rent Act of 1947, as amended. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title, or the Housing and Rent Act of 1947, as amended, authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

(d) (1) Within thirty days after arraignment, or such additional time as the court may allow for good

cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 409 or 706 of this Act, section 205 or 206 of the Housing and Rent Act of 1947, as amended, or section 371 of title 18, United States Code, involving alleged violation of any provision of any such regulation or order, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the President setting forth objections to the validity of any provision which the defendant is alleged to have violated or conspired to violate. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 407 of this title. Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation or order complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the President or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b) and (c) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.

* * * * * * *

Section 706 (b) of the Defense Production Act (64 Stat. 817, 50 U. S. C. App. 2156 (b)), provided as follows in pertinent part:

* * * The termination of the authority granted in any title or section of this Act, or of any rule, regula-

tion, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether heretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. * * *

The General Savings Statute, 1 U. S. C. 109, is as follows in pertinent part:

> * * * The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

No. 75. UNITED STATES *v.* SCHNEER'S ATLANTA, INC. Certiorari, 351 U. S. 981, to the United States Court of Appeals for the Fifth Circuit. Argued January 15–16, 1957. Decided January 21, 1957. *Per Curiam:* The judgment of the Court of Appeals is reversed and the judgment of the United States District Court for the Northern District of Georgia is reinstated. Defense Production Act of 1950, § 706 (b), 64 Stat. 817, 50 U. S. C. App. § 2156 (b). *Samuel D. Slade* argued the cause for the United States. With him on the brief were *Solicitor General Rankin, Assistant Attorney General Doub* and *B. Jenkins Middleton*. *M. H. Blackshear, Jr.* argued the cause and filed a brief for respondent. Reported below: 229 F. 2d 612.